Marlene Industries Corporation; Decaturville Sportswear Co., Inc.; Westmoreland Manufacturing Corporation; Trousdale Manufacturing Company, Inc.; M. I. Fund, Inc.; White Department Stores, Inc., Unishops, Inc.[1] ***and*** **Marlene Industries Corporation; Frisco City Sportswear, Inc.; M. Hoffman & Company, Inc.; Landlubber Alabama, Inc.; M. I. Fund, Inc.; White Department Stores, Inc.; Unishops, Inc.** ***and*** **Russell Sportswear Corporation; M. I. Fund, Inc.; White Department Stores, Inc.; Unishops, Inc.** ***and*** **Marlene Industries Corporation; Aynor Manufacturing Company Inc.; Loris Manufacturing Company, Inc.; M. I. Fund Inc.; White Department Stores, Inc.; and Unishops, Inc.** ***and*** **International Ladies' Garment Workers' Union, AFL-CIO.** Cases 26-CA-3642, 26-CA-3646, 26-CA-3828, 26-CA-5111, 26-CA-5112, 26-CA-5336-1, 26-CA-5336-2, 26-CA-5335, 15-CA-4834, 9-CA-6384, 9-CA-8610, 9-CA-8888, 11-CA-5748, and 11-CA-5749

May 13, 1981

DECISION AND ORDER

On August 7, 1979, Administrative Law Judge Benjamin B. Lipton issued the attached Decision in this proceeding. Thereafter, Respondents, the Charging Party, and the General Counsel filed exceptions and supporting briefs.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[2] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified and restated in full herein.

1. In or about October 1979, while this proceeding was pending before the Board, Respondent Marlene Industries Corporation was in the process of consummating a sale of substantially all of its assets to White Department Stores, Inc., herein called White, a wholly owned subsidiary of Unishops, Inc. The Acting General Counsel thereupon instituted a proceeding under Section 10(j) of the Act for the benefit of such Board order as might issue. It was established at that proceeding, *inter alia*, that (1) Respondent Marlene, a clothing manufacturer, would retain the approximately $42 million derived from the sale, change its name to M. I. Fund, Inc., becoming another subsidiary of Unishops, Inc., and operate as a closed-end diversified investment company; and (2) Unishops, Inc., through its counsel, affirmed that Unishops was "assuming all of the liabilities of Marlene," and that the National Labor Relations Board litigation involved herein was listed on Unishops' schedule of assumed liabilities. Thereafter, the General Counsel filed with the Board a motion to add White, M. I. Fund, and Unishops as Parties Respondent and, after issuance of an order to show cause why such employers should not be joined herein and responses thereto, the Board granted the General Counsel's motion. Thereafter, the Board invited the additional Parties Respondent to file briefs, which they did.

Unishops and certain of its subsidiaries are engaged in the business of discount retailing and, since April 1977, have engaged in the additional business of importing and the wholesale distribution of home furnishings and gift products mainly from the Far East. Further, Unishops, which has acquired the assets and production facilities of Respondent Marlene, will continue to operate the business of Respondent Marlene under the name of Marlene, herein called New Marlene. Respondent Marlene and its subsidiaries, on an annual basis, had a direct outflow in interstate commerce valued in excess of $50,000. During the 1-year period ending January 27, 1977, Unishops and its subsidiaries grossed revenues in excess of $128 million, and, with the addition of New Marlene, expect to gross revenues of approximately $250 million annually. We find, therefore, that Unishops, Inc., and its subsidiaries, White Department Stores, Inc., and M. I. Fund, Inc., are, and at all times material herein have been, employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction over said Parties Respondent.

Therefore, we find that Parties Respondent Unishops, Inc., White Department Stores, Inc., and M. I. Fund, Inc., are jointly and severally liable with Respondent Marlene Industries Corporation and its subsidiaries for any loss of earnings suffered by employees as a result of Respondent Marlene's unlawful conduct against them, and we shall require Respondents herein to take the affirmative action ordered to remedy the unfair labor practices found herein.

2. We agree with the Administrative Law Judge that the strikes at all locations were unfair labor practice strikes from inception, and that the employees discharged for participating therein are en-

[1] The caption has been amended to reflect the motion of the General Counsel discussed *infra*.

[2] Respondents have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

We also find without merit Respondents' allegation of bias and prejudice on the part of the Administrative Law Judge. Upon our full consideration of the record, we perceive no evidence that the Administrative Law Judge prejudged the case, made prejudicial rulings, or demonstrated any bias against Respondents at the hearing, or in his analysis or discussion of the evidence.

titled to reinstatement.[3] In determining the reinstatement rights of the strikers, however, the Administrative Law Judge applied the reinstatement standard applicable to economic strikes and to unfair labor practice strikes unaccompanied by discharges rather than the standard governing unlawfully discharged unfair labor practice strikers, and fashioned his recommended remedy, Order, and notice accordingly. We find, contrary to the Administrative Law Judge, that the discharged strikers herein are entitled to proper reinstatement regardless of whether they have found regular and substantially equivalent employment elsewhere, and that they are entitled to backpay from the dates of their unlawful discharges to the date on which they receive from Respondents valid offers of reinstatement[4] or to the date on which they were fully reinstated whichever is earlier.

3. The Administrative Law Judge deferred to the compliance stage of the proceeding the determinations of whether certain individuals were unfair labor practice strikers and, if so, whether or not they were fully reinstated. The General Counsel and Respondents object to that procedure, arguing that the determination of striker status by the compliance officer would constitute an improper adjudication of such status and, moreover, that the record adequately establishes the issues deferred by the Administrative Law Judge. Contrary to their positions, deferral of such issues to the compliance stage is entirely appropriate and within the authority of the compliance officer when the record does not adequately establish the employees' status and/or the degree, if any, of reinstatement.[5] Here, the record is inadequate in this regard, and deferral to compliance for resolution of these issues is appropriate, as to all of the individuals named by the Administrative Law Judge.[6]

4. The Charging Party and the General Counsel have excepted to the Administrative Law Judge's dismissal of the allegation that Bobbie Gregory and Clovis Merryman were unlawfully denied reemployment because they engaged in picketing and strike activities. We find merit in this exception. Gregory and Merryman were employed by Respondent Trousdale until they were laid off in June 1972, and then terminated on August 25, 1972, because of an altercation which occurred between them on June 19, 1972. Gregory's personnel file reflects that he was terminated on August 25, but gives no reason therefor, although Respondent Trousdale's reason to the State Employment Security office is that there was "no work available." Merryman's file reflects only that he was laid off, then terminated. Both joined the picket line on June 23, 1972, and were included in the Union's April 19, 1974, offer of unconditional reinstatement. Neither Gregory nor Merryman was sent any of Respondent Trousdale's invalid 1974 offers of reinstatement. By letter dated September 20, 1974, the Union informed Respondent Trousdale that, *inter alia*, Gregory and Merryman expected to report to work on September 26, 1974. On September 26, Gregory, Merryman, and three other strikers appeared at Respondent Trousdale where Personnel Director Phyllis Durham told them they had to fill out new applications for employment. After Gregory, as spokesman, replied that the strikers had come to be reinstated with all their rights, Plant Manager E. L. Thomas told the group that there were no openings. Additionally, Durham admitted at the hearing that it was Respondent Trousdale's policy to refuse to employ, even as new employees, strikers who applied for work after the 7-day deadline to return given in Respondent Trousdale's August 30, 1974, letter. On September 29, 1974, Gregory returned alone and spoke with Thomas who ascertained from Gregory that he previously had worked in shipping and receiving and would like to return to work there. Thomas told Gregory that, although there were no vacancies, he would be called, but Gregory never was called or contacted thereafter. During these interviews, neither Durham nor Thomas mentioned the June 1972 altercation.

The Administrative Law Judge concluded that, since Gregory and Merryman were not unlawfully terminated or laid off, they had no reinstatement rights on June 19, 1972, when they were laid off or sent home, or on June 23, 1972, when they joined the picket lines. We agree that these 1972 layoffs and terminations were lawful. In view of Respondent Trousdale's policy of not employing strike participants, however, and the absence of any mention by Respondent Trousdale of the altercation as a reason for not rehiring them, we find that both Gregory and Merryman were denied reemployment because they had engaged in picketing and other strike-related activities. Therefore, we conclude that Respondent Trousdale violated Section

[3] The June 23, 1970, discharge of the Decaturville pressers violated Sec. 8(a)(1), but not Sec. 8(a)(3), as found by the Administrative Law Judge.

[4] *Abilities and Goodwill, Inc.*, 241 NLRB 27 (1979).

[5] *United Maintenance & Manufacturing Co., Inc.*, 214 NLRB 529 (1974); cf. *Panscape Corporation*, 231 NLRB 693 (1977).

[6] Although Respondents may have acknowledged that 29 of the 37 Decaturville employees were strikers by virtue of the invalid offers of reinstatement to those 29, the record does not clearly show either their status as strikers or the time in which they may have been in such status. Moreover, while Respondents' refusal to comply with the General Counsel's subpena for an alleged company-maintained record of the strikers at Decaturville may raise an inference that the subpenaed evidence would be unfavorable to them, that inference nevertheless does not supply the evidence pertinent to the issues.

8(a)(3) and (1) of the Act by refusing to rehire Gregory and Merryman pursuant to the Union's April 19, 1974, unconditional offer to return to work which it made on their behalf, and by again refusing to employ Gregory when, on September 29, 1974, he returned to Respondent Trousdale and made another unconditional application for work. We further find that, by refusing Gregory's unconditional application for work, Respondent Trousdale again affirmed the futility of strike participants applying for work. Accordingly, we shall require Respondent Trousdale to offer to reinstate Gregory and Merryman and to make them whole for the loss suffered by them because of Respondent Trousdale's unlawful conduct.

5. The General Counsel has excepted to the Administrative Law Judge's failure to find that Respondents' Christmas vacation program, which consists of a second week of paid vacation around Christmas, was discriminatorily motivated in that it was initiated during the strikes and unlawfully predicated on time computed during the strikes. The record, however, contains insufficient evidence to establish these charges. Nevertheless, the discriminatees' backpay calculations should include a second week of paid vacation if they would have qualified for it absent the discrimination practiced against them, and we shall so provide.

6. We find no merit in the General Counsel's exceptions to the Administrative Law Judge's dismissal of the allegations that (1) Leonora B. Wyle (Montgomery), Martha Odle (Aedle), Carrie Austin, Vera Mae Hamm (nee Horner), Jimmy Hardison, and Lorine Thorpe were unfair labor practice strikers. The record clearly shows that all of these employees were separated or terminated prior to the onset of the strike for reasons not alleged as unlawful. We also find without merit the General Counsel's contention that Kathryn Hardin was unlawfully denied reinstatement. Hardin admitted that she voluntarily quit in August 1973 and did not engage in any strike activity thereafter.

THE REMEDY

Having found that Respondents have engaged in unfair labor practices, we shall order that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. As an appropriate remedy on such facts as are present, a broad cease-and-desist order is responsively warranted by reason of the wholesale discharges and other discriminations at all plants involved, graphically displaying Marlene's propensity generally to violate the Act.[7]

In view of the long duration of the strikes commencing in 1970 and 1971 at the various plants herein, the equally long period since the end of the strikes in September 1974, and the numerous, persistent, and flagrant unfair labor practices of Marlene and its subsidiaries which precipitated and prolonged these strikes, certain special remedies are necessary to restore, insofar as practicable, the *status quo ante*. Without doubt, many of the strikers have since taken employment with other employers and have found it necessary purely for economic reasons to move to other locations. They should be accorded full and equitable opportunity to consider present offers of reinstatement back to their respective plants, free of any fears of the recurrence of the unfair labor practices against them. Moreover, as found by the court in *N.L.R.B.* v. *Marlene Industries*, 406 F.2d 886 (6th Cir. 1969), Respondent's conduct which caused the strikes at the Marlene plants was part of its countercampaign of "massive anti-union activities [which were] directed . . . system wide and centrally coordinated." During the 9-year period from the onset of the strikes, the Union has been severely handicapped in its ongoing organizational campaigns at each of these widely spread Marlene plants as a direct and calculated result of unremedied unfair labor practices, which effectively destroyed for this period the employees' right of free choice in the possible selection of a bargaining representative.

Therefore, A: Respondent Marlene, together with its subsidiaries, Decaturville, Westmoreland, Trousdale, Loris, Aynor, Russell, and Frisco; Respondent Hoffman, together with its subsidiary, Landlubber; and Parties Respondent Unishops, Inc., and its subsidiaries White Department Stores, Inc., and M. I. Fund, Inc., shall:

1. In addition to the usual postings on all plant bulletin boards, mail a copy of the appropriate notice, attached, to each employee currently employed, and to each striker named in Schedules I through VIII, appended hereto [omitted from publication], except to those employees covered by the dismissed allegations, in accordance with the specific plant involved. The notice shall be signed by the chairman of the board of directors, the corporation president, and the plant manager of the particular plant employing the affected employees. All diligent efforts shall be employed by the Respondents to assure that such communications reach the addressees, including the acceptance of assistance

[7] *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979); *N.L.R.B.* v. *Express Publishing Company*, 312 U.S. 426 (1941); *N.L.R.B.* v. *Entwistle Mfg. Co.*, 120 F.2d 532 (4th Cir. 1941).

by the Union, if again offered. Respondents shall provide the Regional Director for the applicable Region with proof of such mailing. In addition, the notice shall be included in appropriate company publications, such as employee newsletters.[8]

2. Publish in newspapers of general circulation in the area of the respective plants involved the essential terms and provisions of this Order, as reflected in the appropriate notice appended, once a week for 4 consecutive weeks, at a reasonable time and in a form approved by the Board's Regional Director within the Region encompassing the particular plant.[9]

3. Upon its request made within 3 months of this Order, (a) immediately grant the Union and its representatives reasonable access to the plant bulletin boards at all places where notices to employees are customarily posted, at each of the involved plants for a period of 1 year from the date of request, and (b) immediately permit a reasonable number of union representatives access for reasonable periods of time to all canteens, rest and other nonwork areas, including parking lots and plant approaches, within each of the respective plants for a period of 1 year—subject only to reasonable and nondiscriminatory regulations in the interest of plant efficiency and discipline; provided, however, that said regulations do not serve to thwart the employees in the exercise of the rights guaranteed them herein.[10]

4. At such reasonable time after the entry of this Order, as the Board may request, convene during working time by departments and shifts all its employees currently employed in each of the respective plants, and at its option either have the notices, as applicable, read by either the plant manager of such plant or provide facilities for and permit a Board agent to read such notices to the said employees. If it is decided that the notices are to be read by the particular plant manager, the Board shall be afforded a reasonable opportunity to provide for the attendance of a Board agent.

B. Respondent Marlene, together with its subsidiaries, Decaturville, Westmoreland, Trousdale, Loris, Aynor, and Russell and Parties Respondent Unishops, Inc., together with its subsidiaries White Department Stores, Inc., and M. I. Fund, Inc., shall:

1. Offer the unfair labor practice strikers listed in Schedules I through VII [omitted from publication], appended hereto (except as to those whose cases are noted as dismissed)[11] immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights and privileges previously enjoyed, discharging, if necessary, any replacements hired in their former jobs. A copy of the applicable notice from Appendix A or C shall accompany the reinstatement offer and a reasonable period not to exceed 2 weeks shall be provided after receipt of a prompt request of any such discriminatee in order that he or she can give fair departure notice to an interim employer, and make necessary arrangements to return to work at his or her former plant of Marlene.

2. Make whole all discriminatees described in schedules I through VII (except those noted as dismissed), for any loss of earnings they may have suffered by reason of their unlawful terminations, denials of reinstatement, or rehiring as new employees, by payment to each a sum of money equal to that which each normally would have earned, and the monetary value of vacations, holidays, pensions, and other benefits they normally would have accrued, absent the discriminations against them, from the date of their unlawful terminations,[12] the date of their unlawful denial of reinstatement, or the date of their reemployment as new employees, as the case may be, to the date on which they are offered reinstatement, or to the date on which they are, or were, fully reinstated, whichever is earlier. Backpay shall be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977). (See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

C. Respondent Hoffman, together with its subsidiary, Landlubber, shall (a) offer to each of the unfair labor practice strikers listed in the attached Schedule VIII (except Eloise Turberville and those noted as dismissed) immediate and full reinstatement, and to Eloise Turberville immediate and full reinstatement to her entitled job, in the form and manner set forth in paragraph 5, above, and (b)

[8] See *Florida Steel Corporation*, 231 NLRB 651, 652 (1977), 233 NLRB 491 (1978); *J. P. Stevens & Co., Inc.*, 239 NLRB 738 (1978); *Haddon House Food Products, Inc. and Flavor Delight, Inc.*, 242 NLRB 1057 (1979), enfd. 106 LRRM 2462, 90 LC ¶ 12,513 (D.C. Cir. 1981).

[9] In the contempt case, *supra*, the court affirmed the Special Master's recommendation as to Decaturville, Loris, Aynor, and Frisco, based upon limited findings, that the terms and provisions of the court's order be published in local newspapers essentially in the form provided in the text above.

[10] See, e.g., *Marlene Industries Corporation, et al.*, 166 NLRB at 707. Essentially the same remedies were ordered by the court in the contempt case, *supra*, for periods of 1 year as to plant bulletin boards and 6 months as to plant approaches and parking lots.

[11] Subject to the determination of questions affecting some of the named discriminatees, which are deferred to the *compliance* stage, as described in the text of this Decision.

[12] In the absence of an offer of reinstatement to a discharged striker, the employer remains free to avoid or reduce its backpay liability by establishing that such employee would not have accepted the offer if made, or by any other evidence showing the incurrence of a willful loss of earnings, *Abilities and Goodwill, Inc.*, *supra*.

jointly and severally with Marlene, make whole the above-named strikers, and Eloise Turberville, for their loss of earnings in the form and manner set forth in paragraph 6, above.

D. Respondent Marlene, together with or on behalf of its subsidiary, Frisco, and Parties Respondent Unishops, Inc., White Department Stores, Inc., and M. I. Fund, Inc. shall, jointly and severally with Respondents Hoffman and Landlubber, make whole all strikers and Eloise Turberville, described in the attached Schedule VIII [omitted from publication], for their loss of earnings, in the form and manner described in paragraph 6, above.

In light of the foregoing, we shall modify the Administrative Law Judge's recommended Order as set forth in full below:

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

A. Respondent Marlene Industries Corporation, New York, New York; and its subsidiaries, Respondents Decaturville Sportswear Co., Inc., Decaturville, Tennessee; Westmoreland Manufacturing Corporation, Westmoreland, Tennessee; Trousdale Manufacturing Company, Inc., Hartsville, Tennessee; Aynor Manufacturing Company, Inc., Aynor, South Carolina; Loris Manufacturing Company, Inc., Loris, South Carolina; and Russell Sportswear Corporation, Russell Springs, Kentucky; Parties Respondent M. Hoffman & Co., Inc., Boston, Massachusetts, and its wholly owned subsidiary Landlubber Alabama, Inc., Frisco City, Alabama; and the Respondents M. I. Fund, Inc., New York, New York; White Departments, Inc.; and Unishops, Inc.; their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with replacement, termination, discharge, or other reprisal for engaging in a protected strike or other concerted activities, or coercively soliciting employees to abandon such activities.

(b) Discharging, refusing to reinstate, or offering or granting employees reemployment only as new employees, because they have engaged in protected strike or other concerted activities for their mutual aid or protection.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Offer each of the unfair labor practice strikers at the Decaturville, Westmoreland, Trousdale, Aynor, Loris, and Russell plants, as respectively listed in the attached Schedules I through VII [omitted from publication], as amended herein, except those listed as D (dismissed) therein, immediate reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights and privileges previously enjoyed, discharging, if necessary, any replacements hired in their former jobs, and make whole such employees for any loss of earnings, in the manner set forth in that section herein entitled "The Remedy."

(b) Respondent Marlene, on behalf of its subsidiary, Frisco City and Parties Respondent M. I. Fund, White Department Stores, Inc., and Unishops, Inc., shall, jointly and severally with Respondents Hoffman and Landlubber, make whole the unfair labor practice strikers listed in the attached Schedule VIII [omitted from publication], for any loss of earnings, in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Post in conspicuous places in each of the plants involved herein, including the Frisco City plant, with the assistance and cooperation of Respondents Hoffman and Landlubber, and at the premises of Parties Respondent M. I. Fund, White Department Stores, Inc., and Unishops, Inc., copies of the appropriate attached notices marked "Appendix."[13] Copies of said notice, on forms provided by the appropriate Regional Director for Region 9, 11, 15, or 26, after being duly signed by the chairman of the board of directors, the corporate president of each named Respondent, and the plant manager of the particular plant in which the notices are posted, shall be posted immediately upon receipt thereof and maintained by Respondents for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(d) Mail a copy of the said notice to each currently working employee and to each unfair labor practice striker listed in the attached Schedules I through VIII [omitted from publication], in accordance with their respective plants; include such notices in appropriate company publications; publish the terms and provisions of such notices in local area newspapers; and read or have read such notices to the employees, all in the manner set forth

[13] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

in the section of this Decision entitled "The Remedy."

(e) Upon request, immediately grant the Union and its representatives reasonable access, for a period of 1 year, to its bulletin boards and nonworking plant areas, in the manner set forth in the section of this Decision entitled "The Remedy."

(f) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Notify the appropriate Regional Director for Region 9, 11, 15, or 26, in writing, within 20 days from the date of this Order, what steps the Respondents have taken to comply herewith.

B. Respondents M. Hoffman Company, Inc., Boston, Massachusetts, and Landlubber Alabama, Inc., Frisco City, Alabama, their respective officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with replacement, discharge, closing of the plant, or other reprisals, for seeking to join or joining in protected strike or other concerted activities, or coercively interrogating employees, or soliciting employees to abandon their protected strike or other concerted activities.

(b) Failing and refusing to reinstate the strikers at the Frisco City plant and refusing to hire Eloise Turberville.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Offer each of the unfair labor practice strikers listed in the attached Schedule VIII [omitted from publication], except those listed as D (dismissed) therein, and to Eloise Turberville immediate and full reinstatement to their former jobs or, if said jobs no longer exist, to substantially equivalent jobs without prejudice to their seniority or other rights and privileges previously enjoyed, discharging, if necessary, any replacements hired in their former jobs, and make whole said employees for any loss of earnings, in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Jointly and severally with Respondent Marlene, its subsidiaries, Frisco City, and M. I. Fund, White Department Stores, Inc., and Unishops, Inc., make whole the unfair labor practice strikers, and Eloise Turberville, listed in the attached Schedule VIII [omitted from publication], for their loss of earnings, in the manner set forth in the section of the Decision entitled "The Remedy."

(c) Post copies of the attached "Appendix B"[14] at its Frisco City plant. Copies of said notice, on forms provided by the Regional Director for Region 15, after being duly signed as provided in "The Remedy" section of this Decision, shall be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by these Respondents to insure that said notices are not altered, defaced, or covered by any other material. Publish in local area newspapers the terms and provisions of such notice; upon request by the Union, immediately grant the Union and its representatives reasonable access, for a period of 1 year, to its bulletin boards and nonworking plant areas; include such notice in company publications; mail a copy of such notice to each currently working employee and to each unfair labor practice striker listed in Schedule VIII, and to Eloise Turberville, and read or have read such notice to the employees, all in the manner set forth in the section of this Decision entitled "The Remedy."

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Notify the Regional Director for Region 15, in writing, within 20 days from the date of this Order, what steps the Respondents have taken to comply herewith.

IT IS FURTHER ORDERED that the Board shall reserve the right to amend or modify its Order to provide for events which have not been anticipated during the long lapse of time, such as an interim sale, relocation, or removal of the basic operations of any of the plants herein involved.

IT IS ALSO FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar is it alleges violations not found herein.

[14] See fn. 13, *supra*.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT threaten employees with replacement, termination, discharge, or other reprisals for engaging in a protected strike or other concerted activities, or coercively solicit employees to abandon such activities.

WE WILL NOT discharge, refuse to reinstate, offer, or grant reemployment only as new employees, or otherwise discriminate against employees, because they have engaged in a protected strike or other concerted activities for their mutual aid or protection.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed in the National Labor Relations Act.

WE WILL in good faith offer each of the unfair labor practice strikers at the Decaturville, Westmoreland, Trousdale, Aynor, Loris, and Russell plants, as set forth below with respects to the applicable plant, immediate reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights and privileges previously enjoyed, discharging, if necessary, any replacements hired in their former jobs, *with the additional provisions* (a) that a copy of this notice shall accompany the reinstatement offer, and (b) that a reasonable period, not to exceed 2 weeks after receipt of a prompt request by any such striker, shall be provided in order that such striker may give appropriate notice to his or her interim employer, and to make necessary arrangements to return to work at the appropriate plant.

WE WILL make whole all strikers described in the above paragraph for any loss of earnings they may have suffered by reason of their unlawful terminations, denials of reinstatement, or rehiring only as new employees, as the case may be—by payment to each of a sum of money equal to that which each normally would have earned, and the monetary value of vacations, holidays, pensions, and other benefits they normally would have accrued, absent the discriminations against them—from the date of their unlawful terminations, denials of reinstatement, or rehiring as new employees, with interest added.

WE WILL make all diligent efforts to mail a copy of this notice to each of our employees and to the strikers listed above; post copies of this notice on our plant bulletin boards where notices to employees are customarily posted; include this notice in our company publications to employees; and publish the terms and provisions of this notice in newspapers of general circulation within the local area of the appropriate plant once a week for 4 consecutive weeks, on forms and in the manner approved by the National Labor Relations Board.

WE WILL, upon request of the International Ladies' Garment Workers' Union, AFL–CIO, immediately grant such Union and its representatives reasonable access at the appropriate plant, for a period of 1 year, to our bulletin boards, to all places where notices to employees are customarily posted, and to nonworking areas, including plant approaches and parking lots, subject to reasonable company regulations in the interest of plant efficiency and discipline.

All of our employees are free to become or remain members of the International Ladies' Garment Workers' Union of America, AFL–CIO, or any other labor organization of their choosing.

MARLENE INDUSTRIES CORPORATION
(CHAIRMAN OF THE BOARD OF DIRECTORS OF MARLENE)
(PRESIDENT OF MARLENE)
(PLANT MANAGER)

M. I. FUND, INC.
(CHAIRMAN OF THE BOARD OF DIRECTORS OF M. I. FUND, INC.)
(PRESIDENT OF M. I. FUND, INC.)
(PLANT MANAGER)

WHITE DEPARTMENT STORES, INC.
(CHAIRMAN OF THE BOARD OF DIRECTORS OF WHITE DEPARTMENT STORES, INC.)
(PRESIDENT OF WHITE DEPARTMENT STORES, INC.)
(PLANT MANAGER)

UNISHOPS, INC.
(CHAIRMAN OF THE BOARD OF DIRECTORS FOR UNISHOPS, INC.)
(PRESIDENT OF UNISHOPS, INC.)

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT threaten employees with replacement, discharge, closing of the plant, or other reprisal, for seeking to join or joining in a protected strike or other concerted activities.

WE WILL NOT, in a coercive manner, interrogate employees as to their union, strike, or other concerted activities, or solicit them to abandon such protected activities under the law.

WE WILL NOT discharge, refuse to reinstate, or otherwise discriminate against employees because they have engaged in a protected strike or other concerted activities for their mutual aid or protection.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed in the National Labor Relations Act.

WE WILL in good faith offer each of the unfair labor practice strikers at the Frisco City plant set forth below, except Eloise Turberville, immediate reinstatement to their former jobs and to Eloise Turberville immediate reinstatement to her entitled job or, if such jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights and privileges previously enjoyed, discharging, if necessary, any replacement hired in such jobs, *with the additional provisions* (a) that a copy of this notice shall accompany the reinstatement offer to the strikers and the reinstatement offer to Eloise Turberville, and (b) that a reasonable period, not to exceed 2 weeks after receipt of a prompt request by any such employee, shall be provided in order that such employee may give appropriate notice to his or her interim employer, and to make necessary arrangements to return to work at the Frisco City plant.

WE WILL, jointly and severally with Marlene Industries Corporation on behalf of its subsidiary, Frisco City Sportswear, Inc., make whole all the strikers and Eloise Turberville, described in the above paragraph, for any loss of earnings they may have suffered by reason of their unlawful terminations, or refusal to hire Turberville, by payment to each of them a sum of money equal to that which each would normally have earned and to the monetary value of vacations, holidays, pensions, and other benefits they normally would have accrued, absent the discriminations against them, from the date of their unlawful terminations and the date of the unlawful refusal to hire Turberville, with interest added.

WE WILL make all diligent efforts to mail a copy of this notice to each of our employees and to the strikers listed above; post copies of this notice on our plant bulletin boards where notices to employees are customarily posted; include this notice in our company publications to employees; and publish the terms and provisions of this notice in newspapers of general circulation within the local area of the Frisco City plant once a week for 4 consecutive weeks, on forms and in the manner ap-

proved by the National Labor Relations Board.

WE WILL, upon request of the International Ladies' Garment Workers' Union, AFL-CIO, immediately grant such Union and its representatives reasonable access to the Frisco City plant, for a period of 1 year, to our plant bulletin boards, all places where notices to employees are customarily posted, and to nonworking areas, including plant approaches and parking lots, subject to reasonable company regulations in the interest of plant efficiency and discipline.

All our employees are free to become or remain members of the International Ladies' Garment Workers' Union, AFL-CIO, or any other labor organization of their choosing.

M. HOFFMAN COMPANY, INC. LANDLUBBER ALABAMA, INC.
(CHAIRMAN OF THE BOARD OF DIRECTORS OF M. HOFFMAN COMPANY, INC.)
(PRESIDENT OF M. HOFFMAN COMPANY, INC.)
(PLANT MANAGER OF LANDLUBBER ALABAMA, INC.)

APPENDIX C

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL, jointly and severally with M. Hoffman and Company, Inc., and Landlubber Alabama, Inc., make whole all of the unfair labor practice strikers and Eloise Turberville, whose names are set forth below for any loss of earnings they may have suffered by reason of their unlawful terminations, or refusal to hire Turberville, by payment to each of a sum of money equal to that which each would normally have earned, and to the monetary value of vacations, holidays, pensions, and other benefits they normally would have accrued, absent the discriminations against them, from the date of their unlawful terminations and the date of the unlawful refusal to hire Turberville, with interest added.

WE WILL make all diligent efforts to mail a copy of this notice to each of the strikers listed above; have posted copies of this notice on the Frisco City plant bulletin boards, with the assistance and cooperation of Respondents Hoffman and Landlubber; and publish the terms and provisions of this notice in newspapers of general circulation within the local area of the Hoffman and Landlubber plants once a week for four consecutive weeks, on forms and in the manner approved by the National Labor Relations Board.

All our employees are free to become or remain members of the International Ladies' Garment Workers' Union, AFL-CIO, or any other labor organization of their choosing.

MARLENE INDUSTRIES CORPORATION,
ON BEHALF OF ITSELF AND FRISCO CITY SPORTSWEAR, INC.

DECISION

STATEMENT OF THE CASES

BENJAMIN B. LIPTON, Administrative Law Judge: Hearings in these cases were held before me on various dates between September 18, 1978, and January 9, 1979, in Lexington, Jackson, and Lebanon, Tennessee; Florence, South Carolina; Somerset, Kentucky; and Monroeville, Alabama, upon a consolidated complaint by the General Counsel[1] against the above-captioned Respondents, herein also collectively called the Company, alleging certain violations of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, herein called the Act. Answers filed by Respondents deny all alleged violations. Post-hearing briefs by the General Counsel, the Union, and the Company have been carefully considered.

Upon the entire record in the cases, and from my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANIES

Marlene Industries Corporation, herein called Marlene, with its principal offices located in New York, New York, is engaged through wholly owned subsidiaries in

[1] Underlying the consolidated complaint, the charges by the Union were filed, as follows: In Case 26-CA-3642 on April 6, 1970; in Case 26-CA-3646 on April 9, 1970; in Case 26-CA-3828 on October 14, 1970; in Cases 26-CA-5111, 26-CA-5112, and 26-CA-CA-5113 on May 20, 1974; in Cases 26-CA-5336-1 and-2 on October 21, 1974; in Case 26-CA-5355 on November 11, 1974; in Case 15-CA-4834 on April 19, 1973; in Cases 11-CA-5748 and 11-CA-5749 on May 20, 1974; in Case 9-CA-8610 on June 27, 1974; and in Case 9-CA-8888 on October 22, 1974. As to each of these charges, service was effected within 3 days of the filing. Case 9-CA-6384 involves a remand from the Sixth Circuit Court of Appeals on the Board's petition for enforcement of a Decision and Order, described *infra*. On September 24, 1976, an order was issued consolidating all the foregoing cases.

the manufacture and sale of wearing apparel. Decaturville Sportswear Co., Inc., herein called Decaturville; Westmoreland Manufacturing Corporation, herein called Westmoreland; Trousdale Manufacturing Company, Inc., herein called Trousdale; Frisco City Sportswear, Inc., herein called Frisco; Russell Sportswear Corporation, herein called Russell; Aynor Manufacturing Company, Inc., herein called Aynor; and Loris Manufacturing Company, Inc., herein called Loris, are each a wholly owned subsidiary corporation of Marlene engaged in the manufacture of wearing apparel plants located respectively in Decaturville, Westmoreland, and Hartsville, Tennessee; Frisco City, Alabama; Russell Springs, Kentucky; and Aynor and Loris, South Carolina.

Marlene, Decaturville, Westmoreland, Trousdale, Frisco, Russell, Aynor, and Loris, severally and collectively as the Company, on an annual basis had a direct outflow in interstate commerce valued in excess of $50,000, and are engaged in commerce within the meaning of the Act.[2]

Marlene and its wholly owned subsidiaries, as described above, have been affiliated businesses with common officers, ownership, directors, and operators and are a single integrated business enterprise with the said directors and operators formulating and administering a common labor policy for its employees and, accordingly, constitute a single employer for the purposes of the Act.[3]

M. Hoffman & Company, Inc., herein called Hoffman, with its principal offices located in Boston, Massachusetts, is engaged through wholly owned subsidiaries in the manufacture and distribution of wearing apparel. Landlubber, Alabama, Inc., herein called Landlubber, is a wholly owned subsidiary of Hoffman, engaged in the manufacture of wearing apparel at its plant in Frisco City, Alabama, since on or about December 1, 1972. During the year preceding issuance of the complaint, Landlubber had a direct outflow in interstate commerce valued in excess of $50,000. Hoffman and Landlubber have been affiliated businesses with common ownership, offices, and directors and constitute a single business enterprise with the formulation and administration of a common labor policy for all employees at the Frisco City plant. I find that Landlubber and Hoffman, as its parent, herein collectively called Hoffman-Landlubber, are severally and jointly employers engaged in commerce within the meaning of the Act.

II. LABOR ORGANIZATION

International Ladies' Garment Workers' Union, AFL-CIO, herein called the Union, is a labor organization within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Principal Issues*

(1) Whether Nelson Rushing and other pressers at Decaturville were engaged in Section 7 protected concerted activities on June 23, 1970, in protesting changes in work practices affecting their earnings.

(2) Whether the discharges on June 23, 1970, of 51 pressers at Decaturville, because they protested the discharge of Rushing the same day and supported his position and conduct concerning the work changes, violated Section 8(a)(1) and (3).

(3) Whether, following the disharges, the strike by the Decaturville pressers, with the Union's support and assistance, which began on June 3, 1970, and continued until on or about September 26, 1974, was an unfair labor practice strike.

(4) Whether the strike by nonpresser employees at Decaturville, with the Union's support and assistance, on and after June 26, 1970, in protest of the discharges of the Decaturville pressers, was an unfair labor practice strike.

(5) Whether the sympathy strikes engaged in by employees, with the Union's support and assistance, at six other plants of the Company located in Tennessee, South Carolina, Kentucky, and Alabama, which commenced on various dates from July 5, 1970, to May 4, 1971, and continued until on or about September 26, 1974, in sympathy with the Decaturville strikers, constituted unfair labor practice strikes.

(6) Whether the strike at Decaturville with which the strikers at Russell were picketing in sympathy "was activity protected under the Act."[4]

(7) Whether the termination of numerous strikers at the various plants violated Section 8(a)(1) and (3) and operated to prolong the strikes.

(8) Whether the Union's letters dated April 19, 1974, to the Company at each of the seven plants constituted unconditional applications to return to work on behalf of the strikers named in the separate letters.

(9) Whether Section 8(a)(1) and (3) was violated as to certain strikers at each of the plants by the failure fully to reinstate them following unconditional applications to return to work.

(10) Whether Hoffman-Landlubber are successors under the Act following their purchase of the physical assets of the Frisco City plant from Marlene in 1972 during the course of the strike; whether they are, jointly with Marlene, liable for remedying unfair labor practices existing at the time of the purchase and whether they refused to reinstate the strikers at that plant, upon unconditional applications, or to hire them as new employees, in violation of Section 8(a)(1) and (3).

(11) Whether, assuming the strikes at any or all of the plants were economic and not unfair labor practice strikes, Section 8(a)(1) and (3) was violated by the failure to offer strikers, without prejudice to their seniority and other rights previously enjoyed, immediate and full rein-

[2] *Marlene Industries Corporation, et al.*, 166 NLRB 703 (1967), enfd. *sub nom. Decaturville Sportswear Co., et al.* v. *N.L.R.B.*, 406 F.2d 886 (6th Cir. 1969).

[3] *Id.* at 711.

[4] Specific issue remanded to the Board by the United States Court of Appeals for the Sixth Circuit on an enforcement position, described *infra*.

statement to their former or substantially equivalent positions when such positions became available following the strikers' unconditional applications to return to work, under established *Laidlaw* principles.[5]

B. *History and Setting*

Since May 1965, the Union has been engaged in an organizational campaign at the Company's seven manufacturing plants employing at times over 3,000 employees. The Company "countered with a concerted and well-directed campaign of anti-union activities" which led to substantial 8(a)(1) and (3) findings by the Board on July 3, 1967, and enforcement of the Board's Order in all relevant respects by the United States Court of Appeals for the Sixth Circuit on January 29, 1969,[6] in summary as follows:

The Board found (a) numerous acts of restraint and coercion for the purpose of thwarting selection of the Union, such as instigating assaults and threats of violence, promising and granting benefits, engaging in surveillance and interrogations, discriminatorily applying its no-solicitation rule, encouraging and assisting employees to withdraw from the Union, instructing employees to inform the Company of union activities of other employees, threatening to close and to move the plant, warning employees known to favor the Union they would be unable to get jobs in any plant in the State, and (b) discriminatory discharges and/or refusals to recall 17 named employees. In addition to the usual remedies, the Board ordered the Company to give the Union access to plant bulletin boards for 1 year, and to provide an opportunity for union organizers to communicate with employees during nonworking time in specified nonworking areas of the plant for 6 months. The court in its enforcement opinion emphasized the Company's "massive anti-union activities," the "overwhelming evidence" of "deliberate and flagrant violations," and the "system-wide and centrally coordinated movement to commit unfair labor practices."

In September 1971, the Board petitioned the court of appeals to adjudge the Company in civil contempt for failing to comply with its enforcement decree. The Board alleged that the Company, at its various plants, committed independent acts of coercion, and discriminatorily discharged, refused to hire, and denied reinstatement to employees on account of their protected concerted activites. Of particular pertinence, largely encompassing the issues in the present cases, were the contempt allegations involving the discharges of 51 pressers at Decaturville because they protested the discharge that day of Nelson Rushing, a fellow presser, who had complained about changes in the pressers' working conditions, and the denial of reinstatement to numerous sympathy strikers at the Decaturville, Westmoreland, Trousdale, Frisco, Loris, and Aynor plants.

Thereafter, the court referred the contempt proceeding to a Special Master.[7] Respectively, on October 5, decisional memorandums[8] finding contempt conduct in certain limited respects and, as to many of the major issues, recommending that the Board's petition be denied.[9]

On May 23, 1975, the court of appeals affirmed all the Special Master's findings and recommendations, stating in part:

> The Special Master's mere mention of impermissible motives possibly playing some role in the dismissal of Rushing and other employees hardly rises to the level of clear and convincing evidence of impermissible dismissals justifying a finding of civil contempt. A contempt proceeding is a setting very different from a normal proceeding for the enforcement of a Board order. The burden imposed by the clear and convincing evidence standard is heavy. The Board has failed to demonstrate that the Special Master erred in his findings or conclusions.[10]

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[5] *The Laidlaw Corporation*, 171 NLRB 1366 (1968), enfd. 414 F.2d 99 (7th Cir. 1969), cert. denied 397 U.S. 920 (1970).

[6] *Supra*, 406 F.2d 886.

[7] The Honorable Harry W. Wellford, United States District Judge for the Western District of Tennessee.

[8] The parties herein stipulated into the record for all purposes the transcript of the record in the contempt case containing 2,552 pages and two large volumes of exhibits.

[9] *Inter alia*, the Special Master found:

(*Decaturville*) Rushing had been discharged "both for his concerted activity with others in the pressing department, which activity he initiated, but also for his public and adamant refusal to meet with the company plant manager to discuss the problem and complaint." The other pressers had been discharged "because they collectively protested the disharge of Nelson Rushing and refused to perform work under the conditions in existence in the pressing department." Rushing "was discharged for just cause, even though Rushing was also protesting what he believed was unfair," and because the "Company's actions surrounding his discharge were not shown to have been prompted essentially by any anti-union considerations. His discharge therefore constituted neither an unfair labor practice nor a violation of the decree of this Court." The other pressers, who were "not justified in their demands that Rushing be reinstated or rehired . . . before they would return to work . . . were not discharged . . . unreasonably under the circumstances, despite anti-union sentiment on the part of the Company." Even if "the Company acted improperly . . . in disharging the pressers other than Nelson Rushing . . . for engaging in a concerted work stoppage, they should not now in equity be entitled to reinstatement since the Company offered to them full reinstatement on June 24, 1970, by letter which most chose to ignore or decline." The other employees at Decaturville were striking "in protest of the discharges of the employees in the pressing department . . . and also in support of the Union's organizational efforts there." "All employees who went on strike in protest of Rushing's discharge . . . were in fact economic strikers as well as unfair labor practice strikers." All "that the Company should be required to do with those strikers [pressers and others at Decaturville] who had not otherwise beeen terminated for cause . . . and who did not seek reemployment" is to reemploy them upon their unconditional application "as and when there were vacancies." Substantial evidence shows that the Company refused to rehire and to reinstate certain strikers "because of their Union proclivities." However, the decree was not violated because "there was also substantial evidence to show other sound and justifiable business reasons for the decision."

(*Loris*) The Company's refusal to reinstate certain strikers upon their unconditional applications did not violate the decree because they "joined the pickets . . . in an effort to get a union in the plant, as well as to protest what they considered unfair or unjust practices" involved in the Decaturville strike.

(*Frisco*) Refusal to reinstate certain strikers upon their unconditional applications did not violate the decree because they joined the strike "for economic reasons primarily rather than the subordinate claim or protest of an unfair labor practice strike" at Decaturville.

[10] *N.L.R.B.* v. *Decaturville Sportswear Company, Inc., et al.*, 518 F.2d 788, 790 (6th Cir. 1975).

On October 20, 1975, the Supreme Court denied the Board's petition for a writ of certiorari,[11] and on January 14, 1976, the final order issued from the court of appeals.

In 1976, the General Counsel issued complaints against the particular Respondents involved in the contempt petition, *supra*. In 1974, a complaint had been issued against two other Respondents, Hoffman and Landlubber. Respecting Respondent Russell herein, on September 1, 1971, an amended complaint alleged certain acts of coercion and discrimination against employees. On June 29, 1972, the Board issued its Decision and Order[12] requiring, *inter alia*, that Russell offer reinstatement to employees who, on May 4, 1971, struck in sympathy with the Decaturville strikers. On May 15, 1973, the court of appeals denied enforcement of the Board's Order.[13] The court stated in part:

> The order further requires respondent to offer reinstatement to all employees who went on strike on or after May 4, 1971 . . . . The picketing was ostensibly undertaken in support of striking employees of other plants of respondent's corporate parent.
>
> [W]e determine that there is not substantial evidence to support the conclusion of the Board that the picketers were engaged in protected activity. There is no evidence in the record that the strikes at the other plants of respondent's parent were protected activity and thus no evidence to support the conclusion in this case that the strikers of respondent's plant were entitled to protection as unfair labor practice strikers, the assumption on which the Board based its determination that the strikers' activities were protected. The strikers at respondent's plant could obtain no greater protection than that enjoyed by their counterparts with whom they were striking in sympathy. Accordingly, the General Counsel wholly failed to sustain his burden of proof.

On July 17, 1973, on the Board's petition for rehearing, the court ordered the following:

> [U]pon consideration, it is ORDERED that the petition be, and it hereby is, granted; that the order entered in this cause on May 15, 1973, be, and it hereby is, vacated; and that the order of the National Labor Relations Board is hereby vacated, and that the [case] be, and it hereby is, remanded to the Board to determine whether the strike with which the strikers at respondent's plant were picketing in sympathy was activity protected under the Act; to consider any additional evidence that may be offered; and to take other such action as it deems appropriate in view of this Court's previous order.

On September 21, 1973, the Board notified the parties that it had decided to accept the court's remand. On September 8, 1976, a further consolidated complaint was issued against Russell (Cases 9-CA-8610 and 9-CA-8888), and on September 24, 1976, an order issued consolidating all cases herein for hearing.

In all the foregoing complaints, forming the basis for the present consolidated proceeding, alleged 8(a)(1) and (3) violations encompass the discharge of 51 pressers at Decaturville in June 1970, and the denial of reinstatement at all of the various plants of about 350 employees who had engaged in strikes and picketing over a period of more than 4 years.

On April 7, 1977, an administrative law judge recommended dismissal of the instant consolidated complaint on the ground that the earlier contempt findings of the court of appeals barred litigation of alleged unfair labor practices on the principles of "*res judicata* or collateral estoppel." On September 16, 1977, reversing, the Board held that a contempt proceeding, such as the *Decaturville* decision, which involved an application of the "'clear and convincing evidence' standard, cannot bar a subsequent unfair labor practice proceeding involving a different cause of action, different parties, and a 'preponderance of the evidence' burden of proof." The Board thereupon ordered the record reopened and a hearing held on the consolidated complaint herein. On December 29, 1977, the Company filed a petition in the court of appeals to review the Board's order and stay the hearing. On March 30, 1978, the court dismissed the Company's petition, holding that the Board's order sought to be reviewed "is not a final order within the meaning of Section 10(f)" of the Act, and that, "upon the conclusion of the administrative hearing and issuance of a proper order by the Board, the petitioners, if still aggrieved, will be able to seek review in this Court."[14] On October 2, 1978, the Company's petition for certiorari was denied.[15]

C. *Decaturville*

In approximately June 1969, arrangements were set up for the Union to have access to the plant premises and to the bulletin boards under the terms of the court-enforced remedial order, *supra*. The Union fully utilized these privileges, as a result of which organizational activities intensified. About June or July 1969, Lloyd Anderson was employed and installed as the new plant manager.[16] Anderson's superiors included Robert Cole, the Company's general manager, and the plant manager at the nearby Trousdale plant. Anderson frequently consulted as well with Attorney White. Swann Pollard was the personnel director until mid-May 1974, when he was succeeded by Rebecca Adams. Edward Stevens was in charge of the pressing and finishing department, with four subordinate supervisors, including Ray Henley and Glenn Yarbro. The supervisors and several other inspectors performed inspection on the production line of the pressers.

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[11] 423 U.S. 913.

[12] *Russell Sportswear Corporation*, 197 NLRB 1116 (1972).

[13] *N.L.R.B.* v. *Russell Sportswear Corporation*, 83 LRRM 2225, 71 LC ¶13,667 (1973).

[14] *Decaturville Sportswear Co., Inc.* v. *N.L.R.B.*, 573 F.2d 929 (6th Cir. 1978).

[15] 47 L.W. 322.

[16] Anderson testified that his predecessor, Raymond Rindome, left the Company and became plant manager at two nonunion plants opened nearby in Parsons and Lexington, Tennessee.

Of some 54 employees in the pressing department,[17] a considerable number were active in the revitalized union campaign.[18] Unionization was openly discussed during lunch, dinner, and break periods, and occasionally on the job. Union buttons were worn; authorization cards were solicited, signed, and collected; and leaflets were distributed on the plant premises. There is sufficient evidence that the Company, through observation and other means, had direct or implied knowledge of the prounion sentiments of many of these employees.

As Anderson testified, there were numerous changes of policies and procedures after his advent as plant manager. In the pressing department, inspection and quality control were tightened and made more stringent. The pressers worked in pairs, a "topper" and a "legger." They were production employees paid on the basis of timestudy operations. If they failed to "make production," they received only the Federal minimum hourly wage for their time. In September 1969, a quality control engineer was employed to set up standards for quality and to check the work of the inspectors stationed along the pressers' production line. In February 1970, a management memorandum was sent to "All Supervisors—All Sections," which read in part as follows:

> THE FOLLOWING PROCEDURES ARE TO BE USED ON "RED TAG BUNDLES"
>
> * * * * *
>
> 2. INSPECTION:
>
> A. 1 or 2 Defects: Return bundle to inspector for removal and disposition of "Marked Defects." Supervisor to check and sign bundle.
>
> B. 3 or more Defects: (Any Combination of Defect): Return bundle to inspector for 100% recheck, for all types of Defects in bundle. Supervisor to check and sign bundle.

This is the only documentary evidence of an inspection policy affecting the pressers. It is observed that the memorandum does not indicate that it was the operator or presser who would be required to perform the "100% recheck." Supervisors were supposed to inform the employees of policy changes or notices. However, there is no showing as to whether or how the inspection policy was conveyed to the pressers.

Until on or about June 23, 1970, if any slacks moving along the production line were found by an inspector or supervisor to be improperly pressed, they would then be returned to the presser involved for correction. Subsequently, if the quality control people rejected any slacks, even those previously corrected by line inspectors, such pairs would be brought back to the presser for repressing. At times, the presser received back an entire bundle of pants in which the specific garments to be repressed were identified by red tags or other indicators.

As a result of various changes made under Anderson, many of the pressers experienced a significant decline in earnings.[19] The pressers met and discussed among themselves particular changes as they were being made. Frequent grievances were voiced to their supervisor. Previously, under Plant Manager Rindome, a stoppage by the pressers had taken place at the worksite to focus attention on their complaints. Shortly after Anderson became manager, all the pressers engaged in a work stoppage to protest a certain change in their piece rate. Anderson came down to the pressing department and spoke to these employees, warning that if such a stoppage happened again the participants would be fired. No presser was disciplined as a result of these past stoppages.

In the morning of June 23, 1970, Supervisor Henley inspected a bundle of 60 to 80 slacks recently pressed by Nelson Rushing, a topper, and his legger, Melbon Moore. Henley handed five or six pairs to Rushing for repressing. Shortly before the morning break, Henley returned to Rushing's station. He inquired and Rushing told him the repressing had been done. Henley said that ordinarily this was all he was supposed to do; however, on instructions from the department foreman, Stevens, there was a new rule starting that day that if a presser had returned to him as many as three pairs out of any bundle he would have to go and inspect through the entire bundle for any other improperly pressed slacks.[20] Rushing protested that it was not his job as a presser to inspect his own work; he refused to do so on his own time and lose pay on such work.[21] Henley turned to Moore, the legger, and asked him, since he was also responsible for the "bad pants," to inspect the bundle. Moore refused for the same reasons given by Rushing. Henley then said, "All that is left for you to do is you'll have to talk with" Swann Pollard, the personnel director. Rushing declined, indicating he would not go to him but that Pollard would "come down here" if he wanted to talk. Henley left and shortly returned with Stevens. Rushing told Stevens that there was no trouble if he would get this straightened out, and that the pressers were now being asked to inspect bundles they had never before been required to do. Stevens said he could do nothing about the problem. Rushing suggested that he go and discuss it with Anderson. About this time, Lyman Hancock and Larry Creasy approached Stevens and stated that the pressers were not going to inspect their own work; it was what the supervisors were getting paid for and it was the reason they had the separate quality control operation. Stevens advised the pressers he would "take it up with Anderson," and left. Shortly thereafter,

[17] The entire Decaturville work force was about 1,100 in June 1969, 900 a year later—the pressers having been reduced by 30 to 35 percent, and 780 in April 1974. Anderson testified that, from mid-1969 until the hearing, 2,000–3,000 employees were hired.

[18] Based on his close contacts and discussions with fellow pressers, Ralph Hayes estimated about 40 prounion employees. Lymen Hancock put it at 90 to 95 percent of the pressers.

[19] Ralph Hayes testified that, on the average, before the Anderson changes he was making about $3.50 an hour, and after the changes about $3 an hour. Lyman Hancock had been making from $3.50 to $4 an hour, and in the spring of 1970, he was unable to "make production."

[20] Hancock testified to the same effect, that Henley instructed him concerning the "new order" effective that morning, and that he subsequently refused to do inspection of the whole bundle. When Henley told him he would have to "go to the office," he also refused.

[21] Anderson conceded that the inspection rule imposed on the pressers could be described as a "penalty" intended to discourage "poor work."

Stevens returned and informed Rushing, Moore, Hancock, and Creasy that Anderson wanted to see them in his office. Hancock said he did not want to go; he had been there before and accomplished nothing; and, if Anderson wanted to come and talk to them "as a group," they would discuss it with him, "because this concerns all the pressing department." On such basis, refusals to go to the office were indicated by all four pressers who were summoned. Stevens left and most of the pressers went to the lunchroom for the 10 a.m. break.

In a short while, Anderson, Stevens, and Pollard appeared in the lunchroom. Anderson went directly to Rushing's table, at which numerous other pressers had gathered. He pointed to Rushing and said he wanted him to come to his office. Rushing responded, "[I]f this concerns those pants that were bad that I just got through with . . . I done did the bundle that I'm required to do, and . . . the bundle is already gone."[22] Anderson said that it made no difference, that he still wanted to see Rushing in his office, and that he was not fired, but he just wanted to talk to him. Rushing persisted in his refusal to go, stating that the matter concerned all the pressers and he feared being discharged in private. Anderson then replied that he had no alternative but to fire him, and did so. He proceeded to hand Rushing two checks and a separation slip, previously prepared.[23]

Most of the pressers then and there expressed their agreement with Rushing's position and their protest over Rushing's discharge. Anderson reiterated his decision upon being asked by Hancock if he really meant to fire Rushing "over this." Hancock suggested that the pressers could work something out about this incident and to get back and make some kind of production. He proposed that a change be made in "those working conditions" and that Rushing be put back to work. Anderson replied that he was "not making any deals." Hancock and others indicated to the effect that if Rushing were fired then "the whole bunch" might as well be fired. Anderson instructed "everybody that wants a check" to go on to the office, and the rest to go back to work "on these lines." The pressing department employees then followed him to the office where all but two were given their final checks and termination slips.[24] The pressers' slips reflect that they were discharged for insubordination. Rushing's slip reads: "Failure to follow instructions. Refused to go to office."

The foregoing is essentially consistent with, but amplifies in pertinent respects, the findings of fact by the Special Master in that proceeding, of which the record has been incorporated herein. It should be noted that, in these findings, the Special Master relied on, as I do, the testimony given by Rushing and Hancock, which in significant aspects varied from the versions of Stevens, Anderson, and Pollard. Supervisor Henley, a principal participant, did not testify.

On June 23, 1970, after Rushing and the 51 other pressers left the plant, the events of that day were discussed with a union agent then present in the plant's vicinity. Following telephone communications among various union officials, the Union undertook to initiate, support, and lend assistance to a strike, including the granting of regular strike benefits to the strikers. About noon the same day, picketing activities by the strikers commenced and continued, in later years at a reduced rate, throughout the 4-year strike. The two picket signs, which remained unchanged, stated:

> On Strike Against Marlene Industries for Unfair Labor Practices, Workers of Marlene International Ladies' Garment Workers' Union.
>
> We Support the Workers at Marlene Industries Against Unfair Labor Practices, International Ladies' Garment Workers' Union.

On and after June 23, 1970, certain employees, other than the pressers, joined the strike and participated in the picketing. Meetings with the strikers were held on the first day and on later occasions at which the Union discussed picketing conduct, procedures, benefits, and the bases and status of the strike. During the strike, some handbills were distributed, and some sporadic organizational efforts were made. Dated June 24, 1970, Plant Manager Anderson sent the following letter to the pressers:

> Dear [name of employee]:
>
> On June 23, 1970 you were discharged as an employee of this company because you refused to carry out the orders of the plant manager to perform your regular work.
>
> The company does not approve of your action; however, we feel that perhaps your actions were prompted by your emotions and do not represent your real attitude about your job.
>
> You are hereby offered immediate reinstatement to your former position and directed to report for work at 7:30 a.m. Friday, June 26, 1970. If you have not reported for work at the plant by 4:15 p.m. Monday, June 29, 1970, this company will conclude that you are no longer interested in employment at this plant.[25]

Letters from Anderson dated June 24 and June 26, 1970, were sent to employees, other than pressers, who joined the strike, *viz*:

> Dear [name of employee]:
>
> On [June 24 or 26, 1970, as the case may be] you failed to report for work or left your work station

[22] Corroborated by Hayes.

[23] The checks and separation slip for Rushing alone were prepared by Pollard and Anderson in the latter's office before they left for the lunchroom at the 10 o'clock break. Anderson testified that Henley and Stevens did not tell him, and he was not aware, that Moore, Hancock, and Creasy similarly had refused to do the inspection of bundles and to come to his office as instructed. Anderson and Pollard averred, in substance, that the checks and separation slip were made out beforehand so that, if they were unable to "reason with" Rushing, they would try to accomplish the discharge away from the other pressers. I regard this testimony as transparently contrived and incredible.

[24] In the office, two of these employees, who were deaf mutes, were persuaded at the insistence of management to return to work.

[25] On the same date, letters were sent to the working employees, stating in part that a number of pressers were discharged on June 23 because they refused to perform their regular assigned duties, and that there was no strike in progress against the Company.

in the plant without notice to your supervisor and joined a group of people who were demonstrating outside the plant.

You are hereby directed to return to work at 7:30 A.M. Friday, June 26, 1970. If you have not reported for work by 4:15 Monday, June 29, 1970, we will hire a new employee to replace you.

Similar letters were sent to nonpressers who joined the strike on various dates after June 26, 1970.[26]

Some nine pressers who had applied were reinstated—all apparently considered within the deadline of the June 24 letter. The remaining striking pressers, who continued to picket, were terminated, as of the original date of their departure from the plant, June 23. Striking employees, other than the pressers, who returned to work within the deadline of the letters they received were fully reinstated. Those strikers, including one presser, who returned after the deadline, had to fill out new applications,[27] and were hired back as new employees, losing their previously acquired seniority rights, which would adversely affect them in transfers, layoffs, holidays, and vacation pay.[28]

The Company maintains a policy, in existence prior to the strike, of "automatically" discharging any employee who takes employment with another employer. This policy was applied as a basis for terminating strikers, upon information received by the Company that they were working at another job during the strike. On this ground, among others noted in their individual personnel files, numerous strikers were terminated and were thereupon sent separation notices. Some had been rehired following their strike participation and were later terminated during the strike. Others were terminated, e.g., when they "walked off the job" or "failed to report for work" and subsequently became strikers.

On April 19, 1974, the Union sent the Company at Decaturville the following letter:

Gentlemen:

Enclosed is a list of unfair labor practice strikers who hereby offer to return to work immediately without condition. This is a continuing offer.

Please contact the undersigned either by telephone (collect), telegram (collect) or letter as to when these strikers should return to work.

The International Ladies' Garment Workers Union, AFL-CIO, has been authorized by the strikers to make this offer on their behalf. This list may not be complete. We shall forward additional names as we learn of them.

Attached to the Union's letter was a list of 178 names, including that of Nelson Rushing.[29] The Company did not respond to the Union's letter. Utilizing the names on the Union's list, with minor deletions described *infra*, the Company sent a letter to these strikers dated May 6, 1974, *viz*:

Dear [name of employee]:

We have been advised that you may be interested in working again at Decaturville Sportswear Co., Inc.

If you are interested in working here again, please come to the plant personnel office within three days following receipt of this letter and advise the plant personnel manager of your desire to return to work. Based upon your skills, work schedules, and openings, the plant will endeavor to put you to work as soon as practicable.

A second letter, dated June 20, 1974, was sent to the same emoloyees, generally excepting those who had come in and taken a job.

Dear [name of employee]:

We have not heard from you about your working at the plant since our letter to you of May 6, 1974.

If you are interested in working here again, please come to the plant office on or before the close of business on Friday, June 7, 1974. If you have not been to the plant office by Friday, June 7, 1974, we will conclude that the information we received was incorrect and that you are no longer interested in working here.

As of August 7, 1974, the Company terminated all the remaining strikers who had not previously been terminated.[30] Certain of the latter group were sent the letter, on August 30, 1974, offering unconditional reinstatement. By amendment to the complaint at the hearing, the General Counsel alleges that the termination of these 22 strikers (identified *infra*) independently violated Section 8(a)(1) and (3).

The strikers were sent a third letter, dated August 30, 1974, below:

Dear [name of employee]:

[26] Some earlier letters contained the language as above: "conclude you are no longer interested in employment at this plant."

[27] Personnel Director Pollard testified that all employees previously terminated had to file applications as new hires without exception as a matter of company policy.

[28] In addition to 1 week's vacation in July requiring 90 days employment eligibility in 1973, a second week of paid vacation at Christmas was instituted requiring 5 years' employment eligibility preceding December 21, 1973. Strikers reemployed as new employees were not given credit for the time they were out on strike.

[29] A list compiled by the Company shows that, as of July 23, 1970, there were 61 employees, other than pressers, who joined the strike. After such date, there were additional strikers of whom the Company became aware. The Union's list sent with its April 19, 1974, letter reflects the names of 145 nonpresser strikers.

[30] In explanation, Anderson testified that strikers not in a terminated status were carried as unexcused absentees, and it was a daily task to mark their records as continuing in such status. He had regularly been seeking the approval of Attorney White to eliminate this task by terminating these individuals, consistent with the Company's policy in treating unexcused absences. Advice to terminate was given by Attorney White at this time, in view of the Special Master's decision (issued June 12, 1974), which led the Company to believe that those being terminated were not unfair labor practice strikers. I find this testimony totally unconvincing and lacking justification for the action taken. See, e.g., *Frick Company*, 161 NLRB 1089, 1107 (1966), enfd. 397 F.2d 956 (3d Cir. 1968).

> Some time ago we were advised that you might be interested in working again at this plant. Although we have written you two letters, you have not responded to either.
>
> This is to advise you that you are hereby offered immediate reinstatement as an employee at this plant on the job which you were performing immediately prior to your departure from the plant to begin picketing (or if your former job no longer exists, you will be assigned a substantially equivalent job) with full seniority rights which you would have had if you had worked at the plant continuously.
>
> This offer will remain valid for a period of seven days after you receive this letter. If you have not contacted the plant within seven days after you receive this letter and returned to work, we will conclude that you are definitely not interested in working here and will mark our records accordingly.

Certain strikers were selected not to be sent the August 30, 1974, letter. As to these, Anderson testified that the Company did not feel they could be "misconstrued" as being unfair labor practice strikers.[31] Anderson elaborated that the letter was sent to some, but not all, who worked during the strike and then left to join the strike; those discharged for cause; those who had been terminated before the strike; those who had worked since the strike and had quit or were terminated; and those who took jobs elsewhere.

Anderson testified that Attorney White prepared each of the three letters and the list of names to whom the letters were to be sent.[32] The recipients of the first two letters who responded in person at the plant were offered employment, or took employment, as new employees without credit for their past seniority standing. In response to the August 30, 1974, letter, seven strikers came to the plant on or before September 6, applied, and were hired on or before September 9. The strikers who were hired in response to the letter of August 30 were in actuality not reinstated with their full seniority rights. Anderson testified that the failure fully to reinstate the latter strikers was due to a mistake on his part, which he first discovered in 1978.

Dated September 4, 1974, a letter to the Company from the Union states, *viz*:

> Gentlemen:
>
> The following unfair labor practice strikers hereby withdraw the prior offer to unconditionally return to work, which was made on April 19, 1974:
>
> | | |
> |---|---|
> | Mae Rushing | Helen Rhodes |
> | Blanche Avrett | Zora Quinn |
> | Ben Hamm | Susie Stout |
> | Sue Nell Scott | |
>
> The above named strikers have decided to continue to strike against the Company's unfair labor practices, which caused them to strike and which remain unremedied to date.
>
> All of the strikers who have decided to return to work do so without prejudice to their rights to backpay and any other rights they may have as unfair labor practice strikers under Federal law.[33]

About September 4, a union meeting was held, attended by 50 to 60 strikers. They were told by the union agents that the strike was being ended and they could go back to the plant and discuss returning to work.

Dated September 20, 1974, a letter to the Company from the Union states in part:

> Most recently, the Company sent letters to many of the individual strikers including *inter alia*: (Rushing, Avrett, Hamm, Scott, Rhodes, Quinn and Stout) offering reinstatement. On September 4, 1974, I responded that [the aforenamed persons] had decided to continue to strike.
>
> I am writing to now advise you that the above named strikers expect to report to work on Thursday, September 26, 1974. Other strikers also expect to report for work at that time.

None of the strikers came to the plant on September 26. Picketing was completely discontinued on or about September 28, 1974.

Section 7 of the Act explicitly guarantees the right of employees to engage in concerted activities for their mutual aid and protection. This right is extended to individual and multiple employees in pursuit of a common cause,[34] without regard to whether a union is involved in any manner.[35] Thus, employees may, with protection, refuse to perform a particular assignment,[36] cease work at their job station,[37] walk out of the plant or refuse to report, and utilize many other forms of protest if it is concerted in nature and designed to pressure the employer to remedy working conditions they consider unsatisfactory.[38] It is sufficient that the employees concerned

[31] Of the 161 strikers named in the complaint, 104 were sent the August 30, 1974, letter. Of the latter, 26 did not receive the letter, which was returned as undelivered, in many cases because of the wrong address. No effort was made by the Company to determine the correct address or to remail the letter.

[32] White was regularly consulted by Anderson, and by other company personnel, on virtually all decisions to be made regarding the strikers.

[33] Ben Hamm is listed in the Union's April 19 reinstatement application, but not in the complaint. He is one of the four employees found discriminated against in the contempt case *supra*, 518 F.2d 788 (6th Cir. 1975).

[34] E.g., *Houston Insulation Contractors Association* v. *N.L.R.B.*, 386 U.S. 664, 668-669 (1967); *N.L.R.B.* v. *Peter Cailler Kohler Swiss Chocolates Company, Inc.*, 130 F.2d 503, 505-506 (2d Cir. 1942).

[35] *N.L.R.B.* v. *Washington Aluminum Company, Inc.*, 370 U.S. 9, 14 (1962); *First National Bank of Omaha* v. *N.L.R.B.*, 413 F.2d 921, 925-926 (8th Cir. 1969).

[36] E.g., *Bob's Casing Crews, Inc.*, 192 NLRB 1, 5 (1971).

[37] E.g., *Crenlo, Division of GF Business Equipment, Inc.* v. *N.L.R.B.*, 529 F.2d 201, 204 (8th Cir. 1975); *Advance Industries Division—Overhead Door Corporation* v. *N.L.R.B.*, 540 F.2d 878, 883 (7th Cir. 1976): "Employees have the right to make limited use of their employer's property in the exercise of their rights."

[38] E.g., *Graphics Typography, Inc.*, 217 NLRB 1047, 1050 (1975); *McGaw Laboratories, a Division of American Hospital Supply Corporation*, 206 NLRB 602, 604 (1973).

considered that they had a grievance.[39] Where there is no established grievance procedure the employees must "speak for themselves as best they could."[40] The right does not depend on the merits of the grievance involved[41] or the reasonableness of the concerted activity,[42] even though, as is frequently the case, such activity embraces the disobedienoe of an order of management.[43] Nor is it material that the employer has no advance notice or knowledge of the demands,[44] or even that the activity is protected.[45] Employees forfeit such rights only when, e.g., they engage in violence, bad faith, significant disruption of business operations, breach of contract, or indefensible or unlawful conduct.[46]

As to the seven plants involved in this proceeding, the evidence substantially reflects that the Company's actions and policies were for the most part, "systemwide and centrally coordinated." Additionally, as background, it is appropriate to take note of the Company's relevant record of unfair labor practices.[47]

The pressers had acted concertedly on occasions in the past year, including a general stoppage on the job, stemming from the changes in work practices being instituted under Plant Manager Anderson. About 9:30 a.m, on June 23, 1970, Rushing, Moore, Hancock, and Creasy refused to carry out an assignment announced as a changed policy by their supervisor that morning, i.e, to inspect, without compensation in their production earnings, a full bundle of slacks for defective pressing in their own work. All four were then summoned to report to Anderson's office and all refused. During the 10 a.m. break in the lunchroom, at the confrontation by Anderson, Pollard, and Stevens, the entire pressing department of 54 employees displayed their unanimity in objecting to such assignment, and in supporting those who refused to perform it. Accordingly, I find the foregoing conduct of the pressers, arising at their work stations and continuing to be manifested in the lunchroom, clearly constituted a protected concerted activity under the Act.[48]

Anderson came to the lunchroom with the single-minded purpose of directing his orders only to Rushing. His request of Rushing to come to his office was repeatedly declined, with the response that the problem concerned all the pressers. Earlier, Hancock had told Foreman Stevens regarding the same problem that Anderson could come down to talk to them "as a group" and the pressers would willingly discuss it. Even assuming, as I do not find, that Anderson desired to talk to a spokesman for the group, he could not properly, in these circumstances, arrogate to himself the selection of such a representative. Indeed, management was already made well aware of the problem in light of the discussions between Supervisors Henley and Stevens and the pressers, Rushing and Hanoock. Morevover, Rushing's expressed fear, that if he went to the office as requested he would be fired, was a reasonable reaction since he was obviously being isolated from the presser group.[49] Rushing was assertedly discharged for failure to follow instructions and refusal to go to Anderson's office. The final paychecks and separation slip that Anderson had prepared for Rushing alone prior to the lunchroom encounter pointedly shows that the decision to discharge him was made in advance of any attempt by Anderson to discuss with the pressers the pending problem of concern to the entire department. And it plainly leads to the conclusion that Rushing was disparately treated, especially in relation to at least three other pressers known by management to have engaged in the same conduct as Rushing. I perceive nothing in Rushing's conduct disruptive of order and discipline to constitute punishable insubordination or to justify forfeiture of his statutory protection while engaged in a concerted activity.[50]

Rushing, after he and other pressers were discharged (as further discussed *infra*), engaged in the strike from that day until its conclusion in September 1974.

The evidence as to Rushing has been considered in some detail necessarily to set forth the entire relevant context in view of its bearing upon the rights of the other pressers engaged in the strike.[51]

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[39] E.g., *Hugh H. Wilson Corporation* v. *N.L.R.B.*, 414 F.2d 1345, 1349 (3d Cir. 1969), cert. denied 397 U.S. 935 (1970); *N.L.R.B.* v. *Guernsey-Muskingum Electric Cooperative, Inc.*, 285 F.2d 8, 12 (6th Cir. 1960).

[40] *N.L.R.B.* v. *Washington Aluminum Company, Inc., supra*, 370 U.S. at 14.

[41] E.g., *N.L.R.B.* v. *The Halsey Taylor Co.*, 342 F.2d 406, 408 (6th Cir. 1965).

[42] E.g., *N.L.R.B.* v. *Plastilite Corporation*, 375 F.2d 343, 349-350 (8th Cir. 1967); *Dreis & Krump Manufacturing, Inc.*, 221 NLRB 309, 314 (1975).

[43] E.g., *Sears, Roebuck & Co.*, 224 NLRB 558, 562-563 (1976).

[44] In any event, a contention that the strike here was without notice or advice to the Company of the nature of the grievance is to fly in the face of the obvious. The Company had to know that its own conduct brought on the strike.

[45] E.g., *N.L.R.B.* v. *Washington Aluminum Company, Inc., supra*, 370 U.S. at 14; *Hennepin Broadcasting Associates*, 225 NLRB 486, 497-498 (1976).

[46] E.g., *N.L.R.B.* v. *Washington Aluminum Company, Inc., supra*, 307 at 17; *Crenlo Div. of GF Business Equipment, Inc.* v. *N.L.R.B., supra*, 529 F.2d at 204.

[47] As part of the "massive anti-union activities," which were "systemwide and centrally coordinated" in the opinion of the Sixth Circuit Court of Appeals on January 29, 1969, *supra*, 406 F.2d at 889, numerous substantial violations were involved at Decaturville. Subsequently, at this plant, there were unlawful refusals to reinstate strikers except as new employees. *Decaturville Sportswear Co., Inc., et al.*, 205 NLRB 824 (1973). Also at Decaturville, the discharge of one employee and refusals to rehire others, and at Loris, the discharge of two employees, because of antiunion considerations, were found by the Special Master and affirmed by the court in the contempt proceeding, *supra*, 518 F.2d 788, 790 (1975). And see *Marlene Industries Corporation, et al.*, 234 NLRB 285 (1978), concerning the Company's failure to comply with reinstatement orders of the court. At other plants, discriminatory disharges and other coercive conduct were found in *Liberty Sportswear Co., Inc.*, 183 NLRB 1236 (1970), and *Sylco Corporation, A division of Marlene Industries Corporation*, 184 NLRB 741 (1970).

[48] Also, see *N.L.R.B.* v. *Elias Brothers Restaurants, Inc.*, 496 F.2d 1165, 1167 (6th Cir. 1974); *Blue Star Knitting, Inc.*, 216 NLRB 312, 316 (1975).

[49] See *Anchortank, Inc.*, 239 NLRB 430 (1978), stating that employees have the right "to have some measure of protection when faced with a confrontation with the employer which might result in adverse action against the employee. These employee concerns remain whether or not the employees are represented by a union," citing *N.L.R.B.* v. *J. Weingarten, Inc.*, 420 U.S. 251 (1974).

[50] E.g., *N.L.R.B.* v. *Waco Insulation, Inc.*, 567 F.2d 596, 598 (4th Cir. 1977); *Trumball Asphalt Co., Inc.*, 220 NLRB 797, 798 (1975); *AMP, Incorporated*, 218 NLRB 33, 35-36 (1975); *Browning Industries, Venetian Marble of Kentucky*, 213 NLRB 269, 272 (1974); *Dawson Cabinet Company, Inc.*, 228 NLRB 290, 292 (1977).

[51] The record made in the contempt proceeding, incorporated herein, fully litigated the contention that Rushing was unlawfully discharged. In the present case, Rushing's name is not included in the complaint or in

Continued

In *AHI Machine Tool and Die, Inc.* v. *N.L.R.B.*,[52] the court majority found that the walkout of employees to protest the discharge of a fellow employee who "violently and unlawfully slugged a supervisor" was not protected under the Act, since there could not be, in the circumstances, a good-faith belief by the striking employees that the employee involved was discharged for concerted or union activity. However, the court noted and implicitly agreed with the principle established in other circuits[53] that a walkout in protest of a lawful discharge for cause of a fellow employee may, nevertheless, be protected concerted activity. Here, in my assessment of the record, there is no evidentiary basis for a finding or premise that Rushing was lawfully discharged for cause in considering the issues concerning the Section 7 rights of the striking pressers. Even assuming such a premise, however, Rushing's situation is clearly distinguishable in that it involved no violence and that, as I find, the striking pressers could reasonably have had "a good-faith but mistaken belief that [Rushing] was discharged for union [or concerted] activity or was otherwise being treated unfairly or harshly for his conduct."[54] And here, there can be no question that the Company was made aware of the reasons for the strike by the pressers.[55]

During the morning break on June 23, 1970, the pressers reacted to Rushing's discharge with the statement, among others above described, that "the whole bunch" might as well be fired. Anderson literally complied. They were discharged for "insubordination." The above statement of the pressers was plainly not intended, nor treated by the Company, as a voluntary resignation. Rather, it was a strong expression in the heat of the controversy of their common concern and position identical with that of Rushing protesting the changed working conditions, and the disparate treatment of Rushing. Involved as they were in concerted activity when discharged, with no independent basis to warrant discipline, there is no justification whatsoever for their dismissal on the ground of insubordination.[56] Therefore, I reach the conclusion that the pressers supporting Rushing were discharged for engaging in protected activity, in violation of Section 8(a)(1) and (3) as alleged.[57]

With the assistance, direct participation, and continuous financial and other support of the Union, Rushing and the other discharged pressers embarked upon the strike on and after June 23, 1970, behind picket signs proclaiming the purpose of protesting the Company's unfair labor practices. Before the discharges that day, the clearly conveyed stand taken by the pressers in support of Rushing was that the Company's change in their working conditions "concerns all the pressing department." Their own unlawful discharges were the precipitating cause of the strike, intertwined with the discharge of Rushing and their mutual grievances regarding conditions of employment.[58] It is my finding, as further amplified below, that the controlling character of the strike at Decaturville, continuous to its cessation 4 years later, was that of an unfair labor practice strike.[59]

The June 24, 1970, letter to the striking pressers offered "immediate reinstatement," directed them to report for work on June 26 at 7:30 a.m., and set a time limit for the offer itself that they report to work no later than 4:15 p.m. Monday, June 29. In *Decaturville Sportswear Co., Inc., et al.*, 205 NLRB 824, *supra*, the facts were established that 15 pressers (the Miller group) applied for reinstatement and were interviewed by Manager Anderson at the plant on the morning of June 30. In substance, Anderson advised them that the June 29 deadline in the offering letter would be strictly observed—and he proposed to rehire each of them if they returned to work by 1 p.m. that day, as new employees who would be required to fill out employment applications. Four of the group accepted and returned to work as new hands, i.e., Jerry Pratt, Milton Moore, Eddie Kelley, and "Billy

any of the filed charges shown. At the hearing, the General Counsel expressly affirmed, for unexplained reasons, that no violation is alleged as to Rushing individually.

[52] 432 F.2d 190 (6th Cir. 1970).

[53] E.g., *N.L.R.B.* v. *Holcom Armature*, 325 F.2d 508, 511 (5th Cir. 1963), and *N.L.R.B.* v. *Peter Cailler Kohler Swiss Chocolates Co., supra*, 130 F.2d at 505 (2d Cir. 1942). See also *N.L.R.B.* v. *Phaostron Instrument and Electronic Co.*, 344 F.2d 855, 858 (9th Cir. 1965).

[54] *AHI Machine Tool and Die, Inc.* v. *N.L.R.B., supra*, 432 F.2d at 197. A further point of difference in *AHI* is the court's statement that, even if it were in error, enforcement would be denied because there (unlike here) the sympathy strikers were neither discharged nor desired reinstatement.

[55] Cf. *N.L.R.B.* v. *Washington Aluminum Company, supra*, 370 U.S. at 16.

[56] Faced with Anderson's ultimatum that they go back to work or report to the office for their final checks, the pressers refused to abandon the pursuit of their grievance and proceeded to Anderson's office as instructed. They had previously engaged in work stoppages of limited duration within the plant, without being disciplined, though Anderson had warned them of discharge "if it happened again." In this instance, they were discharged for "insubordination," as shown on their termination slips. The subsequent letters to them stated as the reason their refusal to perform their regular work. As to either of these given reasons, the result herein would be the same.

[57] E.g., *N.L.R.B.* v. *Richard M. Brown, D.O., et al., d/b/a Park General Clinic*, 546 F.2d 690, 692 (6th Cir. 1976); *N.L.R.B.* v. *Elias Brothers Restaurant, Inc., supra*, 496 F.2d at 1167; *N.L.R.B.* v. *Comfort, Inc.*, 365 F.2d 867, 874 (8th Cir. 1966); *The Lundy Packing Company*, 223 NLRB 139, 157-158 (1976); *AMP, Incorporated, supra*, 218 NLRB at 36.

[58] For example, see questions raised by the "Miller group," *Decaturville Sportswear Co., Inc., et al.*, 205 NLRB 824, 827 (1973), and Anderson's as well as Swindle's testimony regarding complaints of pressers after the strike had begun, that the inspection practices were a cause of dissatisfaction.

[59] It is clear that the strike was not at any time an organizational strike, so intended or depicted in the signs. The timing and causes are related totally to the discharges of the pressers. Even an organizational or economic strike can be converted, by unlawful employer conduct, into an unfair labor practice strike without a requirement upon the union that it discontinue its interest in recruiting members. And further assuming that the strike had dual objects, both economic and unfair labor practice, it is nevertheless treated for remedial purposes as an unfair labor practice strike. E.g., *N.L.R.B.* v. *Park General Clinic, supra*, 546 F.2d at 692 (6th Cir. 1976); *Larand Leisurelies, Inc.* v. *N.L.R.B.*, 523 F.2d 814, 820 (6th Cir. 1975); *N.L.R.B.* v. *Elias Brothers Restaurants, Inc., supra*, 496 F.2d at 1167; *N.L.R.B.* v. *Cast Optics Corporation*, 458 F.2d 398, 407 (3d Cir. 1972), cert. denied 409 U.S. 850 (1972); *N.L.R.B.* v. *Adam Loos Boiler Works Co.*, 435 F.2d 707 (6th Cir. 1970); *N.L.R.B.* v. *Louisville Chair Company, Inc.*, 385 F.2d 922, 929 (6th Cir. 1967), cert. denied 390 U.S. 1013 (1968); *N.L.R.B.* v. *Sea-Land Service, Inc., et al.*, 356 F.2d 955, 965-966 (1st Cir. 1966), cert. denied 385 U.S. 900; *N.L.R.B.* v. *West Side Carpet Cleaning Co.*, 329 F.2d 758, 761 (6th Cir. 1964); *N.L.R.B.* v. *Fitzgerald Mills Corporation*, 313 F.2d 260, 269 (2d Cir. 1963), cert. denied 375 U.S. 834. And see *Head Division, AMF, Inc.* v. *N.L.R.B.*, 100 LRRM 3035, 3040, 85 LC ¶11,166 (10th Cir. 1979).

London."[60] The Board found that the Company's offer to the Miller group of strikers was designed to penalize them for engaging in protected concerted activity and violated Section 8(a)(1) of the Act. The Company has ordered to reinstate these four employees fully and to make them whole for any loss of benefits.[61] Nine pressers were fully reinstated on June 29,[62] within the deadline of the June 24 letter.[63] After the deadline, Fred Jones was rehired on June 30, 1970, and Richard McClure on July 16, 1973—both, it is assumed, as new employees.[64] Travis Lott was rehired on July 2, 1970, but is not included in the complaint.[65] All remaining pressers continued to strike and were then, after the deadline, entered on the company records as having been terminated, effective June 3, 1970.[66]

As found, the pressers as a group were unlawfully discharged on June 23. Even assuming, however, that the "insubordination" asserted by the Company was grounds for the discharges, the June 24 letter would have constituted a condonation of such conduct.[67] Necessarily, a separate decision was made after the discharges to terminate those pressers who continued to strike upon the expiration of the letter deadline.[68] Anderson's testimony indicates that they were then terminated on the payroll records retroactively to the original discharge date on June 23. Therefore, it is found that the Company further violated Section 8(a)(1) after the June 29 deadline with respect to (a) the renewed termination, and (b) the offers to employ and the rehiring of striking pressers (other than the Miller group) only on a new employee basis. These violations on and after June 30 aggravated and reinforced the unfair labor practice character of the strike.[69]

Furthermore, upon the totality of the circumstances, I find that the offers in the June 24 letter failed to allow a reasonable amount of time for acceptance and return to work,[70] and generally were invalid as not having been made in good faith. Assuming the letters were received at the earliest, on Thursday, June 25, less than 1 day was provided for the strikers to report for work by 7:30 a.m. the next morning as "directed," and less than 3 working days to report for work by the specified June 29 deadline.[71] The offering letter was patently part of a total scheme,[72] in which the Company threatened the pressers with severance of further employment prospects ("conclude you are no longer interested") upon their failure to accept within the narrow time limits—and thereafter promptly carried out such threats by the renewed terminations and the selective hiring of strikers (until 1 p.m. on June 30) as new employees. Such conduct as to the further terminations[73] and the rehiring of strikers only as new employees violated Section 8(a)(1) and (3), and operated to prolong the unfair labor practice strike.[74]

Under the circumstances, the Company failed to satisfy the requirements for a valid reinstatement offer to the striking pressers as related to the original June 23 discharges and to the subsequent, renewed terminations.[75]

At the same plant and behind the same picket signs, the nonpresser employees who joined the strike in large numbers on June 23, 1970, and on different dates throughout the strike,[76] were participating unfair labor practice strikers with the pressers.[77]

[60] Testimony by Axerson (in the contempt record) and exhibits in the present case indicate that Billy London is actually Billy Gordon—a typographical error.

[61] Although the circumstances of all the pressers were litigated in the present case, there is no indication whether the Company has complied with the Board's Order in 205 NLRB 824, *supra*.

[62] Casey, Evans, Fisher, Martin, Perry Moore, Patterson, Rinehart, Rhodes, and Crews. Of these, only Crews, discussed *infra*, is named in the present complaint—which is therefore dismissed as to him.

[63] Anderson's testimony in the contempt case that 14 or 15 pressers came back before the June 9 deadline is unexplained.

[64] As to McClure, other unclarified evidence appears to show that he declined to accept a job as a new employee on September 20, 1970, that he purportedly quit work at Decaturville on May 19, 1973, and that he was rehired on July 16, 1973.

[65] According to Anderson's testimony, there were apparently many pressers, other than the Miller group, who spoke to him after the June 24 letter about returning to work.

[66] Blackstock is noted on Exh. 25 in the contempt record as having been discharged on June 5, 1970.

[67] E.g., *Jones & McKnight, Inc.* v. *N.L.R.B.*, 445 F.2d 97, 103-104 (7th Cir. 1971), and *Packers Hide Association, Inc.* v. *N.L.R.B.*, 360 F.2d 59, 62 (8th Cir. 1966), holding that the condonation "doctrine prohibits an employer from misleadingly agreeing to return its employees to work and taking disciplinary action for something apparently forgiven." In *N.L.R.B.* v. *Colonial Press, Inc.*, 509 F.2d 850, 854-855 (8th Cir. 1975), the tests set forth by the court are clearly and convincingly shown in that (1) the Company, in its letter, effectively agreed to "wipe the slate clean," and (2) before and after the condonation the strikers were employees—as many of them returned to work reinstated or as new employees, thus affecting the entire class of striking pressers.

[68] Personnel Director Pollard testified (in the contempt case) that the allowable period for acceptance—until 4:15 p.m. on June 29—was a "grace period," i.e., suspending the previous discharges on June 23 until the June 29 deadline. This testimony can only be taken as Pollard's own *post facto* legal rationalization and is rejected as untenable. The letter does not speak in such terms. Such a concept of a "grace period," conditionally rescinding the permanence of a discharge, defies logic and experience.

[69] Cases in fn. 59, *supra*.

[70] See *N.L.R.B.* v. *Betts Baking Co.*, 428 F.2d 156, 158 (10th Cir. 1970).

[71] *Ibid.* And, e.g., *Woodland Supermarket*, 237 NLRB 1481 (1978); *Freehold AMC-Jeep Corporation*, 230 NLRB 903 (1977); *Murray Products, Inc.*, 228 NLRB 268, 268-269 (1977); *Seminole Asphalt Refining, Inc.*, 225 NLRB 1202, 1203 (1976).

[72] Also noted are the simultaneous letters to the employees at work informing them that the pressers were discharged for refusal to perform regular duties and that no strike was in progress.

[73] See *N.L.R.B.* v. *International Van Lines*, 409 U.S. 48, 53 (1972): "Quite apart from any characterization of the strike that continued after the wrongful discharges occurred, the discharges *themselves* were a sufficient ground for the Board's reinstatement order."

[74] See Schedule I listing the 51 striking pressers, with notations, in the appendix hereto. [Omitted from publication.]

[75] *Abilities and Goodwill, Inc.*, 241 NLRB 27, *supra*.

[76] Whether or not they are called "sympathy strikers" in no way alters their rights in this case. It should be observed, however, that the evidence shows that they were similarly affected and concerned with Anderson's changes of plant work practices, which were intimately related reasons for the basic strike by the pressers.

[77] As to the nonpressers and the sympathy strikers at Marlene's other plants, *infra*, see, e.g., *Gary Hobart Water Corporation* v. *N.L.R.B.*, 511 F.2d 284, 287 (7th Cir. 1975); *Newspaper Production Company* v. *N.L.R.B.*, 503 F.2d 821, 830 (5th Cir. 1974); *N.L.R.B.* v. *Union Carbide Corp.*, 440 F.2d 54, 55-56 (4th Cir. 1971); *N.L.R.B.* v. *Difco Laboratories, Inc.*, 427 F.2d 170, 171 (6th Cir. 1970); *N.L.R.B.* v. *Southern Greyhound Lines, Division of Greyhound Lines, Inc.*, 426 F.2d 1299, 1301 (5th Cir. 1970); *N.L.R.B.* v. *Peter Cailler Kohler Swiss Chocolates Company, Inc.*, *supra*, 130 F.2d at 506; *C. K. Smith & Co., Inc.*, 227 NLRB 1061, 1071 (1977); *The Hoffman Beverage Company, et al.*, 163 NLRB 981, 982 (1967). And, see, *N.L.R.B.* v. *Russell Sportswear, supra*, 83 LRRM 2225, 71 LC ¶13,667 (6th Cir.) rehearing granted, vacated and remanding, July 1973.

As earlier quoted, company letters dated June 24 and 26, 1970, and similar letters thereafter, were sent to nonpresser employees upon their joining the strike. These strikers were directed to return to work by a specified deadline (within 2 days after receipt of the letter) or they would be replaced. I that find these letters, carrying a threat of loss of employment, constituted unlawful solicitation of strikers to abandon the strike violating Section 8(a)(1),[78] allowed an unreasonably short period for acceptance,[79] and were otherwise tainted with bad faith.

On a special list (Resp. Exh. 5) maintained by the Company until July 23, 1970, of 61 nonpresser strikers recorded, 11 appear to have returned to work within the deadline and were fully reinstated. Of the 11 reinstated, 3 are named in the complaint. Ralph Barnett informed the Company on November 13, 1972, that he was resigning and going to work with another employer. Phyllis Bartholomew resigned on April 13, 1971, because she had no babysitter, and was rehired on June 1, 1971. James Renfroe, who worked only during the "summer months," is shown to have been again rehired on April 1, 1974, and terminated on April 19, 1974, as a voluntary quit for failure to report. There being no further evidence, the complaint allegations as to these three strikers are dismissed.

After the deadline in the letters of June 1970, and subsequent similar letters, the strikers who applied and were hired came back as new employees.

During the strike, the Company terminated many of the nonpressers listed in the complaint,[80] upon information that they accepted employment with another employer. The information came to the Company in various forms, including reports from other employees, townspeople (Pollard testimony), the other employers, and purportedly from strikers themselves who resigned at the time for such purpose.[81] It is well established that such employees engaged in a strike are entitled to reinstatement upon unconditional application, unless they have acquired in the meantime regular and substantially equivalent employment elsewhere.[82] I find that the Company's blanket application of such termination policy, without regard to the employees' status as strikers, was inherently destructive of employee rights and violative of Section 8(a)(1).[83] As to those strikers who actually took temporary, part-time, short-term, nonsatisfactory, or not substantially equivalent employment with other employers, their termination for such reasons denied them reinstatement rights and violated Section 8(a)(1) and (3).[84] However, no such violation attaches as to employees terminated during the strike who were not strikers at the time and who had voluntarily quit with notice to the Company that they were taking such outside employment.[85] These questions are deferred to the compliance stage of the case.[86]

In its letter to the Company dated April 19, 1974, above, the Union stated that it was making unconditional application on behalf of certain listed strikers at Decaturville, which included 39 pressers. The latter consist of the originally striking pressers, including Nelson Rushing, but excluding 13 of the 15 pressers reinstated or rehired following the Company's June 24, 1970, offering letter, *supra*.[87]

Notwithstanding the Company's challenge, I find the Union's letter was a valid unconditional application for reinstatement of these strikers. The Union had been engaged in an organizing campaign of the Company's employees since 1965 and unquestionably had a membership among them, without having established majority status at any plant. Although a minority union, it clearly had the right to strike against unfair labor practices and to provide leadership to the employees in protest of such conduct. It was the Union which inaugurated, organized, directed, and financed the expenses of the strike and picketing, including strike benefits and maintenance of strike headquarters with paid organizers at each plant, and was instrumental in bringing the strike to an end after 4-1/2 years.[88] Throughout the strike, the picketing by employees was conducted behind signs in the name of the Union.[89] By joining such a strike, the employees implicitly endorsed the Union's conduct of the strike and authorized it to speak on their behalf with the Company as to the causes of the strike, in calling off the strike, and in requesting their reinstatement. During the strike virtually all the strikers were notified of their terminations for unjustified reasons, described herein, and certain strikers who personally applied to return to work were rehired only as new employees. It is fair to infer that the strikers as a class were led to believe that it would have been futile for them individually to seek reinstatement.[90] Substantially the full list submitted by the Union was acted upon by the Company with one or more letters to the

[78] E.g., *Cusano d/b/a American Shuffleboard Co.* v. *N.L.R.B.*, 190 F.2d 898, 901, 902 (3d Cir. 1950); *Sumter Plywood Corporation*, 227 NLRB 1818, 1823 (1977); *Otsego Ski Club-Hidden Valley, Inc.*, 217 NLRB 408, 409 (1975); *Kerrigan Iron Works, Inc.*, 108 NLRB 933, 938 (1954)—"an unlawful strikebreaking technique."

[79] Fn. 71, *supra*.

[80] See Schedule II, with notations, appended hereto. [Omitted from publication.]

[81] See, e.g., *The Coca-Cola Bottling Company of Memphis*, 232 NLRB 794, 811 (1977)—that notices of quitting submitted by strikers are not necessarily conclusive of intention permanently to abandon their jobs.

[82] E.g., *Little Rock Airmotive, Inc.* v. *N.L.R.B.*, 455 F.2d 163, 168 (8th Cir. 1972); *H. & F. Binch Co. Plant of the Native Laces and Textile Div. of Indian Head, Inc.*, 188 NLRB 720, 725 (1971), enfd. 456 F.2d 357, 364 (2d Cir. 1972).

[83] E.g., *American Machinery Corporation, supra*, 424 F.2d at 1326.

[84] E.g., *Frick Company, supra*, 161 NLRB at 1107.

[85] As to nonpresser strikers who were reemployed as new employees upon their applications, and who subsequently resigned to work elsewhere at less than substantially equivalent employment, the Company has a continuing duty to offer them full reinstatement to their former or equivalent jobs. See, e.g., *H. & F. Binch Co., supra*, 188 NLRB at 726.

[86] E.g., *Panscape Corporation*, 231 NLRB 693 (1977).

[87] There were minor discrepancies in the Union's list, which also appear in par. 13 of the complaint: Cruise should be Crews; McClue should be McClure; Golley should be Tolley; Shovers should be Shavers; and Author Rose should be Arthur Ross (both separately named only on the Union's list).

[88] Bearing in mind that the long duration of the strike is squarely assignable to the Company's numerous and serious unfair labor practices as found herein.

[89] It was not necessary that employees consistently, or at all, engage directly in picketing to be strikers. It was sufficient, for example, that they refused to cross the picket line. E.g., *N.L.R.B.* v. *International Van Lines*, 409 U.S. 48, 49, 52 (1972).

[90] Further discussed *infra*.

strikers[91] which effectively recognized the decision finally to abandon the strike, and the willingness of the strikers to return to work.[92] The authority of a minority union, as here, to make a collective unconditional application for reinstatement of strikers, certainly where no majority union exists, is well precedented.[93] An employer is not permitted to delay reinstatement by insisting on individual striker requests to be reinstated: a collective request through a union is sufficient.[94] When it receives the union's blanket request for reinstatement for all strikers, the employer is then obligated to respond in timely fashion by making bona fide offers to reinstate the strikers,[95] and the offers must be "specific, unequivocal, and unconditional."[96] It is inconsistent with such burden that the employer insist upon the strikers individually appearing at the plant to confirm the union's request on their behalf. Nor is it necessary that the strikers specifically authorize the union to make such a request.[97] Nor does the fact that picketing continues after a proper request for reinstatement invalidate the request.[98] The subsequent individual applications of strikers, particularly after the employer's solicitations, do not detract from the effectiveness of the union's collective offer on their behalf.[99]

Since it is found *infra* that the large bulk of the Decaturville strikers were illegally terminated during the course of the strike, as to them, in any case, no unconditional application is required for purposes of backpay, which begins to run from the date of their terminations.[100]

After its receipt of the Union's April 19, 1974, unconditional application, the Company sent out the series of three letters, in May, June, and August, as will be later discussed.

On August 7, 1974,[101] as earlier described, the Company terminated out-of-hand 22 nonpresser strikers.[102] Section 8(a)(1) and (3) was violated in the latter terminations, and in the similar terminations of Max Essary on January 25, 1971; Dinah Griggs on January 23, 1973; Bobby Johnson on July 22, 1970; Regina Reeves on May 3, 1973; Nancy Wallace on August 30, 1972; Bernhard Mervhill, on June 24, 1970, and Shirley Stout on July 17, 1970,[103] for walking out to become strikers.[104] The same violations were committed as to all strikers, in addition to those specified above, who were offered jobs only as new employees or were employed but not fully reinstated during the strike.[105]

The Company sent one or more of the May, June, and August 1974 letters, *supra*, to all the pressers, except Danny Crews, and all but 15 of the nonpressers, as listed by the Union and the complaint.[106] Crews was on the company payroll continuously since June 29, 1970, when he was fully reinstated after initially striking. Harry Rushing died in 1970 or 1971. As to these two pressers, the complaint is dismissed.

Violations in the denial of reinstatement are alleged as to 161 listed strikers. Of these, 123 are nonpressers. As an apparent inadvertence on the overall list, Leona Wyle is the same as Leona Montgomery, who was terminated on July 30, 1969, i.e., before the strike. Similarly, Martha Odle, Carrie Austin, Mary Hayes or Mary Grooms (both listed), Vera Hamm (nee Horner), Jimmy Hardison, and Lorine Tharp were separated before the strike for reasons not alleged as unlawful.[107] There is no company record or other evidence of employee status as to

[91] See *W. C. McQuaide, Inc.*, 220 NLRB 593, 609 (1975), enfd. 552 F.2d 519 (3d Cir. 1977), where it was found that the employer "obliquely acknowledged the bona fides of the Union's offer" by two communications to the strikers written immediately after receiving the union's letter.

[92] E.g., *Comfort, Inc.*, 152 NLRB 1074, 1079, fn. 6 (1965), enfd. 365 F.2d 867, 877 (8th Cir. 1966).

[93] E.g., *Consolidated Edison Co. of New York, Inc.* v. *N.L.R.B.*, 305 U.S. 197, 237 (1938); *American Machinery Corporation* v. *N.L.R.B., supra*, 424 F.2d at 1328; *N.L.R.B.* v. *Phaostron Instrument and Electronic Co., supra*, 344 F.2d at 859 (9th Cir. 1965); *N.L.R.B.* v. *I. Posner, Inc., et al.*, 304 F.2d 773, 774 (2d Cir. 1962); *F. M. Homes, Inc.*, 235 NLRB 648 (1978).

[94] E.g., *Newspaper Production Company* v. *N.L.R.B.*, 503 F.2d at 829; *National Business Forms*, 189 NLRB 964 (1971), enfd. 457 F.2d 737 (6th Cir. 1973). *Mississippi Steel Corporation*, 169 NLRB 647, 662 (1968), cited by Respondents, is distinguishable on its particular facts.

[95] E.g., *Newspaper Production Company* v. *N.L.R.B., supra* at 829; *Rogers Manufacturing Company* v. *N.L.R.B.*, 486 F.2d 644, 647 (6th Cir. 1973); *Coca-Cola Bottling Works, Inc.*, 186 NLRB 1050, 1051 (1970).

[96] E.g., *Standard Aggregate Corp.*, 215 NLRB 154 (1974), and cases cited therein.

[97] Prior to the Union's April 19 letter, meetings were held with available strikers in which it was effectively decided that the strike was to be finally abandoned. Cf. *N.L.R.B.* v. *Acme Wire Works, Inc.*, 582 F.2d 153, 159 (2d Cir. 1978).

[98] E.g., *N.L.R.B.* v. *W. C. McQuaide, Inc., supra*, 552 F.2d at 529; *Seminole Asphalt Refining, Inc.*, 207 NLRB 167, 179 (1973), enfd. in pertinent part 497 F.2d 247 (5th Cir. 1974).

[99] E.g., *F. M. Holmes, Inc., supra*, 235 NLRB 648, fn. 3; *J. H. Rutter-Rex Manufacturing Company, Inc.*, 158 NLRB 1414, 1439 (1966).

[100] *Abilities and Goodwill, Inc., supra*, 241 NLRB 27 (1979).

[101] In some instances in the Company's rosters in evidence, or in testimony, the dates are indicated as August 12—which rather reflects when separation notices were marked.

[102] Personnel Director Adams in her testimony enumerated only 20 such strikers, omitting Susie Stout and Martha Campbell (shown in Resp. Exh. 3). The others are B. Averett, D. Crossnoe (Eula), Diane Hayes, A. Horner, E. M. Johnson, L. Leasure, H. Lindsay, F. Millner, J. O'Guinn, M. Pearcy (Pratt), Benny Perry, Bobby Perry, Z. Quinn, M. Roah, M. Rushing, P. Rushing, D. Tharp, L. Williams, F. Yarbo, and (Betty) Jane Yarbro. The Company's contention in its brief that Quinn's job was abolished in June 1974 is unsupported.

[103] Even if it is assumed, as entered in the Company's notes, that Johnson and Stout "walked off" before their 2-week notice to quit had elapsed, such notice would not deprive them of the right to strike, as they did, respectively, on June 26 and July 17, 1973. The fact that some of these employees signed termination slips is not conclusive evidence that they voluntarily quit. Such signing was done at the Company's request and was needed by the employee for purposes, e.g., unemployment insurance or obtaining other employment.

[104] E.g., *N.L.R.B.* v. *International Van Lines, supra*, 409 U.S. at 53; *American Machinery Corporation* v. *N.L.R.B., supra*, 424 F.2d at 1326; *N.L.R.B.* v. *Comfort, Inc., supra*, 365 F.2d at 874; *Empire Corporation*, 212 NLRB 623, 624–625 (1974).

[105] E.g., *Rogers Manufacturing Company* v. *N.L.R.B., supra*, 486 F.2d at 648; *N.L.R.B.* v. *Central Oklahoma Milk Producers Assn.*, 285 F.2d 495, 497–498 (10th Cir. 1960); *Decaturville Sportswear Co., Inc., supra*, 205 NLRB at 824.

[106] Anderson's testimony is that the first two letters were sent to 146 and the third letter to 103 individuals. See Schedules I and II. [Omitted from publication.]

[107] It does not appear that any of the latter returned to work and joined the strike thereafter, although Tharp filed an application May 10, 1974, on which Pollard noted she had been walking the picket line. The General Counsel's position, amended at the hearing, that Austin was unlawfully denied employment as an applicant, is rejected, as opposed to the complaint allegation that she was denied reinstatement.

Tommy Walker and Ben Horner.[108] Bill Keats was laid off on June 15, 1970, resumed work on July 13, 1970, and has since worked continuously, with no showing he engaged in the strike. Melba Ferrell was discharged on August 2, 1971, for stealing, and Ronald Moyes on September 15, 1971, for falsifying tickets. The General Counsel has offered no evidence or contention to dispute these terminations allegedly for cause. Kathryn Hardin, *who testified*, was hired in November 1972, and admitted she voluntarily quit in August 1973. She received the Company's May 6, 1974, letter. She made numerous efforts and filled out applications to be rehired. In an interview with Plant Manager Anderson in May or June 1974, she insisted upon the "same privileges" and refused consideration as a new employee. However, she stated she had nothing to do with the strike after quitting in 1973, and there is no evidence of any strike activity on her part. The General Counsel advances no theory other than the alleged refusal to reinstate her as a striker. As to all the foregoing nonpressers, the complaint is dismissed.[109]

The May and June 1974 letters did not unconditionally offer reinstatement.[110] Referring indirectly to the Union's application, they were essentially a testing of the recipient's interest in returning to work at the Company's discretion. Those who came to the plant following these letters were required to fill out applications for employment[111] as new employees, which many of them refused to do.[112] Those who were offered and accepted jobs came back in the status of new employees.[113]

The August 30 letter contained language offering full reinstatement, with the limitation of 7 days after receipt of the letter for the striker to "contact" the plant and return to work.[114] Of all Decaturville strikers sent the August 30 letter, apparently only seven (named in the complaint) came to the plant and were hired on or before September 10.[115] One of these was a presser, Brigance.[116]

Martha Campbell (nonpresser) testified in substance that on September 5 she was required to fill out an application and was hired on September 9 as a new employee. The signed application provides: "I have read the above and understand that I am on probation for 90 days, and I can be terminated at any time at the discretion of the company without recourse." Brigance, on being rehired, signed an application with the same probation clause.

I do not credit Plant Manager Anderson's testimony to the effect that, although his instructions were fully to reinstate all strikers who responded to the August letter, such intention was not carried out due to an inadvertent oversight on his part discovered shortly before the first hearing herein on August 16, 1978. The omission to which he adverted was the failure to accord the returned strikers their immediate health insurance coverage. However, as shown, they were denied other substantial rights to which they were entitled for full reinstatement. Section 8(a)(1) and (3) was violated in the failure fully to reinstate the seven strikers rehired in September 1974.[117]

All the unfair labor practices found hereinabove operated on the various dates of their occurrences further to prolong and aggravate the strike at Decaturville. Numerous strikers appeared at the Decaturville plant during the course of the strike seeking to return to work.[118] Ex-

[108] Horner is indicated in Resp. Exh. 24 as "must be Ben Hamm." Hamm is listed in the Union's reinstatement application but not in the complaint. The record contains evidence as to his treatment by the Company as a striker applicant. Hamm was ordered to be reinstated and made whole in the contempt proceeding, *supra*. And see *Marlene Industries Corporation, et al., supra*, 234 NLRB 285.

[109] Duplicate names of nonpressers appear on the list in the complaint. Patty Camper is also shown as *Patterson*; Dorothy McDaniels also as *Shelton*; Mary Hart also as *Johnson* and *Robinson*; and Mary Pearcy also as *Pratt*. The complaint is dismissed as to the italicized duplicate names.

[110] E.g., *Retail, Wholesale and Department Store Union, AFL-CIO* v. *N.L.R.B.*, 466 F.2d 380, 385 (D.C. Cir. 1972); *Controlled Alloy, Inc., Harlin Precision Sheet Metal Fabrication Co., Inc.*, 208 NLRB 881, 883-884 (1974); *National Business Forms*, 189 NLRB 964 (1971), enfd. 457 F.2d 737 (6th Cir. 1973).

[111] Some applications were taken at the switchboard without interviews. In view of conflicting evidence on the record as a whole, I do not accept certain testimony of the Company that new applications from the strikers were requested in order to obtain current data on these employees. In any case, such a contention has been rejected as not constituting legitimate and substantial business reasons for the failure to accord strikers full reinstatement. *American Machinery Corporation, supra*, 174 NLRB at 133-134.

[112] For example, Raymond Blackstock, Jefferson Clenney, Arthur Ross, Lyman Hancock, Lynn Lowery (pressers), and Zora Quinn (nonpresser) were interviewed at the plant following the May 6 letter, during which they refused to consider employment on terms other than with all their reinstatement rights. Catherine Holliday (nonpresser) had been at the plant in 1974, filled out an application, and was told there were no openings by Personnel Director Adams. Later she received a letter dated May 22, 1974, in which she was offered a specific job, and instructed to "contact" the plant within a specified time. She did not respond. I find this letter was not a reinstatement offer and, even if accepted, her job status would have been that of a new employee.

[113] Raymond White was rehired on such basis as a turner on July 25, 1974, and was transferred to his regular job of presser on April 21, 1975. Sarah Bedwell (Carrington) was hired August 17, 1970, was laid off for lack of work on September 24, 1971, and joined the strike sometime thereafter. In 1973, she was told by Adams that the plant was "not hiring"; on February 15, 1974, she filed an application with Adams and was then advised of "no openings"; on May 21, 1974, she again had to make out an application and was hired as a new hand. Employees named in the complaint were similarly rehired in 1974 before the Company's August 30 letter, i.e., Melba Jones on March 20; Judy Easton on April 1; Joyce Newman on April 16; Patty (Patterson) Camper on April 22, Faye Railey on May 6; Sheila Davis on May 8; Vicky Parrish and Parker Spence on May 29; Gary Jones on June 6; Regina Reeves on June 12; Shirley Alexander on July 23; Hazel Patterson on July 29; and Doris Stanfill on August 6. Others rehired as new employees in the prior years of the strike are shown in Schedule II. [Omitted from publication.]

[114] As to numerous strikers, the letter was returned to the Company as undelivered. No further attempt was made to locate these persons or to resend the letter. It is irrelevant that strikers, entitled to reinstatement, failed to keep their addresses current if, as I find here, the employer makes no genuine effort to reach the strikers. See, e.g., *Little Rock Airmotive, Inc.* v. *N.L.R.B.*, *supra*, 455 F.2d at 168.

[115] Following the Union's April 19, 1974, letter, tape recordings were made at the striker interviews, which were conducted by Pollard (until his departure in May 1974) and by Anderson.

[116] The other six were Rubye Brasher, Gloria Campbell, Martha Campbell, Dinah Griggs, Joey Johnson, and Marie Roach (nonpressers). Ralph Hayes (presser) came into the plant on September 6, allegedly was offered a job on September 7 to begin work on September 9, but failed to report. It is held that, in any event, such offer was to return as a new employee.

[117] Cases in fn. 105, *supra*.

[118] Applications from strikers and others were kept in a separate file and "discarded" after 6 months if not acted upon. If the individual was hired within this period, the application was placed in his personnel file. The record reveals, however, discrepancies in the failure of certain personnel files to show such applications of the strikers. At a much later point it was testified that the applications were not actually "discarded"

Continued

cepting those who were fully reinstated, such strikers are found to have individually made unconditional application for reinstatement, whether or not expressed in precise terms.[119]

To facilitate the hearing and relieve the amount of cumbersome data, notes were made by the General Counsel from the personnel files of employees named in the complaint and summaries offered by the General Counsel and Respondent were admitted in evidence, subject to later challenge or amplification in the record. These documents provide the source of pertinent employment history for numerous alleged discriminatees who did not testify. It is of course critical to determine the striker status of each such individual on the main thrust of the complaint that they were denied reinstatement. There is no clear showing of such status in the instances of the individuals set forth below,[120] some of whom are noted as having failed to report to work or "walked out" on certain dates during the strike. It is of some significance that the great majority of these individuals[121] were sent one or more of the company letters following its receipt of the Union's unconditional application listing them as strikers. The Union's list was carefully screened by the Company to delete the names of "strikers" to whom letters were not sent for various reasons. Plant Manager Anderson testified that a record was kept of strikers on a daily basis since the strike began. Such a record covering the entire period of the strike, if separately maintained, was not produced at the hearing. Accordingly, the question of their striker status is deferred to the *compliance* stage. The complaint is to be dismissed as to those not found to have such status in essential respects. As to those found to have had such status, the disposition as to them should conform with the findings herein, as pertinent.[122] These individuals are:

Shirley Alexander	Wanda Montgomery
Joyce Blankenship	Randy Moody
Patty (P.) Camper	Bonnie Newman
Sue Clenney	Joyce Newman
Randy Courtwright	Vicki Parrish
Sheila Davis	Mickey Pearcy
William Davis	Nettie Petterson
Nancy Dyer	Faye Railey
Judy Eason	Diane Roach
Betty Jo Gooch	Danny Rogers
Melba Grooms	Caroline Rushing
Christine Hardison	Janet Rushing
Nina Hedgepath	Sue Scott
Ray Hensley	Parker Spence
Brenda Inman	Doris Stanfill
Betty Jo Ivey	Ruth Stanfill
Gary Jones	Art Townsend
Melba Jones	Shirley Vise

Joyce Weatherford

It was against this background, as detailed above, that the Company, 4-1/2 months after the Union's unconditional application, suddenly reversed course on August 30, 1974, by sending out its "reinstatement" offers to most of the strikers. Especially in view of the compelling circumstances herein, the Company had the obligation to demonstrate that its reinstatement offers to these strikers were made in absolute good faith, were diligently pursued, and strictly complied with the requirements of the law. As I find, the August 30 offering letter was made in bad faith, and thereby rendered invalid, by substantially failing to put the strikers on reasonable notice that they were being offered true reinstatement.[123] And in actuality it is clear that the literal terms of the letter were not carried out, nor were they intended to be. The principal considerations are summarized: (1) The Union's April 19, 1974, letter to Decaturville, as with the Company's other plants involved, conveyed an unconditional application to return to work on behalf of all the strikers specified, and thereby signified the general intention to abandon the strike. Upon receipt, the Company became legally obligated under long-settled law to offer them immediate and full reinstatement to their former or substantially equivalent jobs and, if necessary, to dismiss any replacements of the particular strikers.[124] (2) The failure reasonably and diligently to locate or make further effort to communicate with numerous strikers after the August 30 letters to them were returned as undelivered.[125] In its April 19 letter, the Union's request that it be "contacted" as to when the strikers shall return to work was disdained by the Company. After 4-1/2 years in closely supervising the strike, the Union would undoubtedly have

but were taken from the file and stored elsewhere. However, although requested at the hearing, they were not generally produced.

[119] Where the strikers appeared at the plant following their receipt of a company letter, in nowise can they be deemed to have waived their full rights of reinstatement. They were generally looking to the Union's recommendations based on any company response to the April 19 collective application. It cannot be said they were answering only to the Company's invitation, rather than personally affirming the earlier unconditional request on their behalf.

[120] Helen Rhodes was identified as a striker in Anderson's testimony. Nancy Thomas' application on May 10, 1974, contains a notation by Pollard recognizing she was previously a striker.

[121] In all 29 of the 37 named in the text hereafter.

[122] The Company contends in its brief that all 76 individuals listed in Resp. Exh. 10 (which includes most of the names in the text below) are not entitled to reinstatement because "they were not 'employees' as of the effective dates in question." The circumstances of all the alleged discriminatees have been individually considered and treated herein. This broadscale, obfuscating argument is rejected.

[123] See, e.g., *N.L.R.B.* v. *W. C. McQuaide, Inc., supra*, 552 F.2d at 530.

[124] Even assuming they were merely economic strikers, they were, nevertheless, entitled to immediate reinstatement to their old or equivalent jobs, if then available. If not available, the economic striker retains his status as an employee indefinitely thereafter, and is entitled to full reinstatement upon departure of his replacement unless he has, in the meantime, acquired regular and substantially equivalent employment elsewhere or the employer, having the burden of proof, can show that its failure to offer reinstatement was for legitimate and substantial business reasons. E.g., *N.L.R.B.* v. *Fleetwood Trailer Company, Inc.*, 389 U.S. 375, 379-380 (1967); *The Laidlaw Corporation*, 171 NLRB 1366, 1369-70 (1968). No such showing was made here. As to Decaturville, and other plants, the parties stipulated that, during all material times, employees had been hired in the same classifications as occupied by the strikers named in the complaint. Additionally, the plant was publicly advertising during this period for employees, e.g., sewing machine operators. Personnel Director Pollard testified that the Company "hired all the people we could get"—from 1967 until he left in May 1974.

[125] Anderson admitted it was a fairly close knit group in a small community if word was needed to be delivered to an employee outside the plant.

had far better information than the Company as to the whereabouts and circumstances of the strikers. Indeed, such communication with the Union would have beneficially served the Company if it were intent upon acting effectively and expeditiously.[126] (3) The exclusion of strikers from the list of names to be sent the August 30 letter, described by Plant Manager Anderson as embracing "some, but not all," who worked during the strike and then left to join the strike, who worked since the strike and had quit or were terminated (for whatever reasons), and who took jobs elsewhere. The numerous strikers who personally appeared, unconditionally applied, and were rehired as new employees during the preceding 4 years were also excluded, without effort to restore them to full reinstatement. Thus, the August 30 letter was designed to reach an arbitrary selection of strikers and substantially failed to meet the general application for reinstatement advanced for all the unfair labor practice strikers. (4) Following the Union's April 19 letter, the Company seized upon the unconditional application to approach the strikers in two letters, containing vague terms, to come in before a deadline if they were interested in returning to work, and subject themselves to the Company's discretion. It was the actual intention of the Company to take back the strikers, if at all, only as new hires. If they failed to report within the time limit of the second letter, the Company would conclude they were "no longer interested in working here," and would "mark [its] records accordingly"—language which the strikers could reasonably construe as meaning they would thereafter be denied any reemployment. (5) On August 7, the Company arbitrarily terminated a group of 22 strikers, with notices mailed to many of them on August 12 (i.e., shortly preceding the August 30 letter). The bulk of the strikers had previously been terminated, similarly for unlawful reasons as earlier found. Such notices at this stage could only have served to obliterate any remaining prospect of reinstatement in the minds of the strikers. (6) It is particularly noted that the August 30 letter was mailed about 4-1/2 months after the Union's unconditional application of April 19, thus failing materially to afford the strikers a reasonably prompt response. Between these dates, the procedures employed by the Company were patently dilatory in purpose and result.[127] (7) The Company's setting and strictly applying a 7-day deadline after receipt of its August 30 letter[128] provided an unreasonable period of time for the strikers to report, in view of the length of the strike and the totality of circumstances.[129] *Inter alia*, it denied the strikers adequate time to confer with one another and with the Union, to give their interim employer sufficient notice, and to make personal arrangements to be "returned to work," as specified in the deadline provision. Moreover, no attempt was made to show legitimate business reasons for the shortness of the deadline; and unquestionably jobs were available. This factor alone in the given context renders the offer invalid.[130] (8) To have made a valid and good-faith offer in these circumstances, it was incumbent upon the Company clearly and specifically to disabuse the strikers of the effects of its past unlawful rejection of its reinstatement obligations,[131] by rescinding and disavowing the recent terminations of August 7, prior terminations for walking out on strike and for taking other jobs, the threatened forfeiture of reemployment rights by failing to meet the deadlines in the company letters, and the new employee status of strikers previously rehired. Additionally, it was necessary in the instant circumstances that the strikers be provided with effective assurance that there would be no reprisals for their having engaged in the strike.[132] In all these regards, the burden falls on the Company, as the original wrongdoer, to establish that it made a valid reinstatement offer.[133] It is evident that the August 30 letter was strategically timed and designed by the Company to produce a basis for halting its backpay liability,[134] with the expectation of only a minimal response from the strikers. As to the few who showed up before the deadline, they were not in fact accorded reinstatement. (10) Generally the record, as already detailed, pervasively displays the tactics, gamesmanship, and machinations of the Company throughout the strike, under instruction from Attorney White. These, it is reasonably inferable, had the effects of instilling in the strikers a distinct sense of futility[135] that they could regain their prestrike status by making personal applications to the Company.

Accordingly, I find that the Company substantially failed to offer or grant valid, bona fide, and full reinstatement to the strikers (listed in Schedules I and II [omitted from publication]) upon their unconditional applications, and thereby violated Section 8(a)(1) and (3) as alleged.

As earlier described, the Union notified the Company by letter on September 4, 1974, that seven named strikers[136] had decided to continue the strike; and, by further letter on September 20, it indicated that the specified

[126] E.g., *Marlene Industries Corporation, et al.*, 234 NLRB 285, 287-289 (1978).

[127] E.g., *N.L.R.B.* v. *W. C. McQuaide, Inc.*, *supra*, 552 F.2d at 530, fn. 26.

[128] If received on Saturday, August 31, preceding the Labor Day weekend, the deadline would have fallen on September 6 and have provided only 4 workdays for acceptable response.

[129] Cases in fn. 71, *supra*.

[130] E.g., *Penco Enterprises, Inc. Penco of Ohio, and Acoustical Contracting and Supply Corp.*, 216 NLRB 734, 735 (1975).

[131] The consistency of the Company in this regard is further revealed in its failure to carry out the order of the Sixth Circuit Court upon the recommendations of the Special Master in the contempt case, *supra* (518 F.2d 788), that it reinstate and make whole the discriminatees R. C. Brashers and Peggy Cagel at Decaturville. *Marlene Industries Corporation, et al., supra.* Judy Maness Scott is also included among the four employees similarly affected by the court's contempt order. Scott is specifically alleged in the present complaint and found, among others *infra*, to have been denied reinstatement at the close of the strike. It is reasonable to infer widespread interest and awareness of the strikers in the outcome of the court's order.

[132] See, e.g., *Containair Systems Corporation*, 218 NLRB 956, 960 (1975).

[133] E.g., *Rafaire Refrigeration Corp.*, 207 NLRB 523 (1973).

[134] For example, Plant Manager Anderson testified that the letter was sent "strictly in an effort of cutting off backpay should it occur."

[135] Strikers "need not apply for reinstatement if application would be futile." *Eagle International, Inc.*, 221 NLRB 1291 (1975). See also, e.g., *N.L.R.B.* v. *Valley Die Cast Corp.*, 303 F.2d 64, 66 (6th Cir. 1962); *Piasecki Aircraft Corporation* v. *N.L.R.B.*, 280 F.2d 575, 585 (3d Cir. 1960), cert. denied 364 U.S. 933 (1961); *F. M. Holmes, Inc.*, *supra*, 235 NLRB at 649, fn. 5; *Valley Oil Co., Inc.*, 210 NLRB 370, 371 (1974).

[136] Mae Rushing, Blanche Averett, Ben Hamm, Sue Scott, Helen (Eason) Rhodes, Zora Quinn, and Susie Stout. (Hamm is not included in this complaint, *supra*.)

strikers, and others, expected to report for work on September 26. None of these strikers appeared at the plant on or since September 26, 1974. Rushing, Averett, Quinn, and Stout were terminated as of August 7, 1974, thereby obviating reinstatement requests on their behalf, *supra*. In view of the Union's unconditional offer of April 19, 1974, and the subsequent events detailed above, I find that the total effect of the September 4 and September 20 letters was to remove the Union's outstanding application on behalf of Scott and Rhodes only for the period between the dates the Company received these letters. The letters could in no event operate to relieve the Company of its reinstatement obligations under the Act.

D. *Sympathy Strikes at Other Marlene Plants Generally*

Strikes commenced at the following plants: on July 15, 1970, at Frisco; on July 16, 1970, at Trousdale, Westmoreland, Aynor, and both plants of Loris; and on May 4, 1971, at Russell. At each of these seven plants, union agents on the scene arranged the strike activity in prior discussions with employees,[137] and, except at Russell, simultaneously ceased any existing organizational activity. Strike headquarters with union agents continuously present were set up at each plant location. Picketing by employees was conducted without interruption from the initial dates, above, until the strike ended in late September 1974, with the same two types of placards used at Decaturville, *supra*.[138]

The overriding reason for the strike at these plants was to protest the unfair labor practices of the Company, principally the unlawful discharges of Decaturville employees, and to lend sympathetic support to the Decaturville strikers.[139]

Sympathy strikers, as here involved, are entitled to the same protection as their counterparts at the same company with whom they are striking in sympathy.[140] It has extensively been found herein that the Decaturville strike from the inception was a protected concerted activity and that it was caused and repeatedly prolonged by the Company's unfair labor practices. Accordingly, the same rights and protection afforded the Decaturville strikers attach to the strikers at Westmoreland, Trousdale, Aynor, Loris,[141] Russell, and Frisco, and the sympathy strikers are likewise held unfair labor practice strikers. Additionally, as will be shown, violations at particular plants were committed during the course of the strikes, including terminations, which still further operated to prolong the unfair labor practice strikes at each such location.

From the onset of the strike until its culmination, the developments and communications at these sympathetically struck plants[142] are substantially similar, and in many respects identical, to those already described regarding the Decaturville plant.

Upon their joining the strike, employees received company letters directing them to return to work by a specified date (e.g., within 2 to 5 days) or be replaced (in some cases "terminated"). Those who applied for work after the deadline of the letter were offered employment only as new employees, which most refused. Others remaining on strike were terminated as "voluntary quits," for being absent for 3 or more days without notice to the Company.

The Union sent letters to each of the plants on April 19, 1974 (at Russell on April 15), making application for work on behalf of listed strikers.[143] For the same reasons set forth respecting the Decaturville plant, *supra*, the finding is made that the Union's letter in each instance constituted a valid unconditional request for reinstatement of the named strikers. Two letters, one typically in early May and the other in late May or early June, were sent by the Company to most strikers identified in the Union's respective letters. The first letter requested, if they were interested in working at the plant, that they come in within 3 days after receipt and, based on their "skills, work schedules, and openings," the Company would "endeavor" to put them to work "as soon as practicable." The second letter was a followup and inferentially an adoption of the first, but added—"If you have not been in to the plant office by [7 days after date], we will conclude that the information we received [presumably the Union's April 19 letter] was incorrect and that you no longer are interested in working here." Those strikers who responded were required to fill out applications to be considered for employment as new employees, and, in most instances, no actual offers of jobs were made. Essentially as to all responders, the proposals of the Company of less than full reinstatement were refused. On August 30, the Company sent a third letter to selected strikers offering "immediate and full reinstatement" to their former or substantially equivalent jobs—however, making the offer "valid" only for 7 days after receipt of the letter. On essentially the same grounds described as to Decaturville, *supra*, the August 30 offer is found, as to each plant other than Frisco, to have been made in bad faith and generally invalid. At Westmoreland, only two strikers appeared within the 7-day deadline, of which one was rehired, *infra*. At Trousdale, two strikers appeared and were rehired, *infra*.

On September 4, 1974, the Union wrote the Company at Trousdale, Westmoreland, Aynor, and Loris, stating that certain named strikers withdrew their prior uncondi-

[137] Testimony shows that at Westmoreland, for example, the union agent made house visits to employees informing them of the picket line to be set up in connection with the Decaturville strike.

[138] By stipulation.

[139] See, e.g., the similar finding in *Russell Sportswear Corporation, supra*, 197 NLRB at 1117. For example, at Westmoreland and Trousdale, specific testimony shows that before the strike commenced it was discussed with employees during house visits by a union agent, and thereafter employees formed and joined the picket line. G.C. Exh. 53, previously rejected, is admitted only to show the general nature of the materials disseminated to employees as testified by Union Agent Dehil. Handbills of a similar nature are noted in the Special Master's memorandum opinion, *supra*.

[140] Cases in fn. 77, *supra*.

[141] In 1971, the two previous operating plants at Loris were merged into one.

[142] In view of the successorship issue, the Frisco plant will be treated separately.

[143] By further letter to Trousdale on May 14, 1974, the Union added three names. These, however, were not included in the complaint, as were all others named by the Union.

tional applications and decided to continue to strike. On September 20, 1974, in letters to these plants, the Union advised that the same specified strikers, and "other strikers," expected to report to work on September 26, 1974. It is again held that the Union's outstanding application on behalf of these named strikers was withdrawn only for the period between the dates the Company received the September 4 and September 20 letters. At Westmoreland and Trousdale, the strikers who reported were turned away because their present requests for reinstatement were beyond the deadline of the August 30 letter, discussed *infra*. All picketing ceased, and the strikes effectively came to a halt, on or about September 28, 1974.

As to Decaturville, Westmoreland, Trousdale, Loris, and Aynor, the parties stipulated that, during all times material herein, employees had been hired in the same classifications as occupied by the strikers named in the complaint, and that, at each of these plants, the average annual turnover of employees was 10 percent, except Westmoreland and Trousdale which was 25–30 percent. Public advertisements for sewing machine operators were run by Decaturville, Westmoreland, and Trousdale during periods in mid-1974, as well as in subsequent years. As to any particular striker at any of the plants, the Company has not attempted to establish the permanent replacement of any striker or elimination of any job in question. The generalized facts stipulated do not fulfill the Company's burden in this respect. I find this evidence is sufficient, absent clear showing to the contrary involving any specific employee in issue, to establish that the strikers, whether considered unfair labor practice or economic, were not denied the reinstatement because of elimination or unavailability of their former or substantially equivalent jobs.

E. *Westmoreland and Trousdale*

The Westmoreland and Trousdale plants,[144] about 20 miles apart in Tennessee, closely collaborated in their policies concerning the strike. At Westmoreland, the plant manager at the outset of the strike, L. E. Broyles, was replaced in February 1974, by Walter Tanner, who continued at least through September 1974. Tanner testified that he was immediately supervised by Trousdale's plant manager. A succession of plant managers held the post at Trousdale during the period of the strike, latterly consisting of E. L. Thomas and L. F. Orenstein.

The complaint alleges 25 and 40 employees, respectively, at Westmoreland and Trousdale, who were effectively involved in the strike.[145] At both plants, the strikers were sent the usual company letter shortly after they joined the strike[146]—that they were "demonstrating outside the plant"—and directing them to report to work by a specified time (less than 2 days) or they would be replaced by a new employee and their "records marked accordingly." It appears that all such strikers failed to report back within the deadline and, after several days, were removed from the payroll, or terminated, at the respective plants. Termination notices were placed in their personnel files but were not sent to these strikers.

Following the Union's April 19, 1974, letters to each plant, substantially all the strikers were sent the Company's first two typical letters, in May 1974.[147] Six of the strikers appeared at the Westmoreland plant seeking reinstatement on repeated occasions in May, June, and September 1974.[148] Several similarly appeared at Trousdale after the first May letter. At both plants, they were requested to fill out new applications, contemplating jobs only as new employees.[149] All except one (Dickens at Trousdale) refused,[150] and were not hired, though jobs were admittedly available.

The 1970 letters threatening replacement or termination, the refusals to reinstate the strikers who personally applied at the plant, the offering to and rehiring of strikers only as new employees throughout the strike for engaging in protected activity were violations of Section 8(a)(1) and (3), which further aggravated and prolonged the unfair labor practice strikes at Westmoreland and Trousdale.

At Westmoreland, the company letter of August 30, 1974, and the two earlier letters were sent to all but four of the strikers. Betty Simons, in charge of payroll and personnel, testified as to the reasons: Brawner (1), Mary Carter (2), and Miller (3) had returned to work before other company letters were mailed in May 1974. Plant Manager Tanner had instructed her to send the August 30 letter to all strikers who "had not worked for us again between the period of July '70 until this time" (when the letter was prepared for mailing). The question whether all or any of these three employees had been fully reinstated prior to the Union's unconditional application on April 19, 1974, is referred to the compliance stage.[151] Simons stated that Mary Graves (4) was not an employee when she joined the picketing 2 or 3 weeks after she was

[144] Trousdale's average annual employment was 450.

[145] On the Westmoreland list, Mary Ruth Carter and Mary Ruth Cannon are the same person. On the Trousdale list, Willa Patterson Thurman and Willa Patterson are the same. The names of Patterson and Cannon are hereby stricken from the complaint and dismissed.

[146] It was testified the letters were sent over a 2-year period at Westmoreland.

[147] See Schedules III and IV, appended hereto, listing with notations the affected strikers at Westmoreland and Trousdale. [Omitted from publication.] In its brief, the Company raises the question, *inter alia*, as to Mary Graves at Westmoreland on the basis that she was not an employee at the time the strike began, July 16, 1970. This may be a *non sequitur* as to the issue. Graves is shown to have been laid off or terminated on January 25, 1972, for lack of work. Betty Simons for the Company included Graves as having been seen as a striker and who was then sent the typical letter to return to work.

[148] Brenda Wilson (2), Denise Driver (1), Nancy Graves (3), Vickie Hudson (2), Martha Summers (4), and Bertha Wheeler (4).

[149] Among other things, Westmoreland Manager Tanner told strikers that, if the strike were declared legal at a later date, the Company would disregard their new applications and go back to their old applications, i.e., in effect to reinstate them. He also said that other girls were rehired after filling out applications, and he had to treat them all alike. He admitted that requiring strikers to fill out applications meant they would be new employees if hired.

[150] That these strikers told the Company they were applying "under protest" would hardly impair the unconditional nature of their applications, particularly since they defined the actual terms of their requests for full reinstatement.

[151] I do not accede to the General Counsel's willingness in his brief to delete the names of Brawner and Miller on the ground that there does not appear to be evidence of their strike activity. Simons testified she saw them, among others, engaged in picketing. And the record raises the inference that, after striking, they were probably reemployed as new employees.

"terminated." It appears in Graves' personnel file that she was separated on December 19, 1971, and was sent a termination notice on January 25, 1972, indicating she was laid off for lack of work and would be considered for rehire. My finding is that Graves was an employee in layoff status when she joined the picket line and is therefore entitled to reinstatement upon the Union's unconditional application made on her behalf.

At Westmoreland, following the August 30 letter, only Fannie Gann was reemployed within the deadline set forth in the letter.[152] Gann had come to the plant and filled out a new job application on August 2, 1974.[153] Plant Manager Tanner testified that, because she had this application on file at the time of the August 30 letter, he called her to come in on a specific date. None of the other strikers was similarly called. On September 4, Gann reported to Tanner and was hired that day at her former job. She quit (for unexplained reasons) after working 7 hours. Immediately above Gann's signature on her August 2 application, a printed provision states: "I further understand that if I am employed, it will be on probation, and I can be terminated for any reason at the discretion of the Company without recourse." Simons testified the plant manager makes the decision whether a probationary employee becomes permanent, and nothing in Gann's file shows that her status was made permanent. I do not credit Tanner's testimony that there were no probationary employees between 1970 and 1974, and that no effect was given to the probationary language in the application. He admitted, however, that the application form currently in use had been drawn by superior authority in the Company, and that no official had instructed him to ignore the probationary language. It is further noted that similar probationary clauses are contained in the applications and are given effect at other company plants.

Sheila Trout appeared at the plant on September 5, 1974, in response to the August 30 letter. Simons asked her if she wanted to put in an application. Trout replied in the negative, and said she wished to see Tanner about the letter. In her conversation with Tanner, she requested reinstatement to her former job with full seniority. He said her job had been bottom hemming. She disagreed, explaining that she had done some bottom hemming initially, but her job was sleeving when she went on strike. Tanner agreed to her request that she start the following Monday so that she could take care of a babysitter problem and give some notice at another job she was holding. Finally, Tanner told her that she had her full seniority, but if work ran low, and in order "to keep down trouble," she would be the first one to be moved (to another job) before anyone else. She refused; he said nothing further; and she went out the door. Normally, when work becomes slack, the junior employees on a line would be temporarily moved to another job function. Trout testified that she would have particular difficulty making production on the sleeving job, especially after her long absence during the strike, if she were to be transferred at times to other functions, and therefore she believed she would lose money under the arrangement offered by Tanner.[154] The methods of compensating piece-rate employees, as described in the record, appear to justify Trout's apprehensions.[155] I find she was not offered reinstatement with full seniority.

Tanner testified that Myrtle Gammons and Linda Thompson also came in together, seeking jobs in response to the August 30 letter, were asked as to their availability, but were not hired. Both indicated they were presently working at another company. Gratuitously, Tanner averred that he would have "reinstated" them if they had been willing to come back to work. Gammons said she did not have any certain job before the strike, as Tanner could recall. He offered her "just a job." She said she would think about it. Thompson was "pretty much the same." It is fairly obvious that Gammons and Thompson reported to the plant for the purpose of obtaining reinstatement to their former jobs. I reject Tanner's generalized assertion, based on a frail memory, that they could not specify what jobs they previously had. Records were of course readily available to ascertain such information. And Tanner made no attempt to offer substantially equivalent employment. A conflict lies in his own testimony that machines and work were made ready for all the strikers who were sent the communication of August 30.[156] I find that Gammons and Thompson, upon their appearance, were not offered the full reinstatement purportedly proffered in the August 30 letter.[157]

After the Union's notice to Westmoreland in its letter of September 20, that Summers, Wheeler, Hudson, Nancy Graves, and "other strikers" expected to report to work on September 26, these named employees appeared at the plant on such date and spoke with Tanner. Summers came with Wheeler and Hudson but was individually interviewed by Tanner and his assistant, Robert. Tanner said the machines and work had been made ready for the girls to begin their jobs upon their reporting within the deadline of the August 30 letter. "Now they don't have the machines and the work is low." When Summers left, she told Wheeler and Hudson of the conversation with Tanner in which she was refused employment. Tanner initially testified that he spoke with Summers, Wheeler, Hudson, and Graves as a group on September 26. He told them—"We didn't have anything for them, that we had given them seven days to return and nobody had come back." After the August 30 letter

[152] Simons estimated 8-10 employees came in.

[153] The original application in her file is dated October 13, 1961.

[154] Trout's testimony is credited as against the vague denials of Tanner.

[155] An employee's earnings are determined on the basis of the time-studied production rate attached to the particular style or job. Failing to make the production quota over a period of 1 week, the employee is paid the minimum wage. Although many jobs involve operation of a sewing machine, the particular type of machine and the functions and skills involved may differ significantly as to proficiency or ability, and therefore affect the earning power of an employee.

[156] It is hardly conceivable, in light of the record, that Tanner had such machines ready and waiting for some 21 strikers extending through the 7-day period after they received the August 30 letter. When Gammons and Thompson came in, he supposedly did not know what their former jobs were.

[157] I take as sincere Martha Summer's testimony of the reasons she did not respond to the August 30 letter after making four attempts at reinstatement in May and June.

was sent, he had the machines set up for the strikers on the jobs they previously held. Prior to September 26, he had received instructions from Attorney White not to put the girls back to work, because "they had their time," i.e., the deadlines of the August 30 letter had expired. He denied he told them there was no work. Admittedly, there were jobs available at the time. Indeed, Westmoreland had newspaper advertisements, in August 1974, that it was "expanding production" and seeking "experienced machine operators, etc."

At Trousdale, the August 30 letter was sent to 35 strikers, that is, all except Lonie Smith, Larry Jones, Rickie Dickens, Bobby Gregory, and Clovis Merryman. Dickens had been hired as a new employee on May 30, 1974, and terminated on June 5, 1974. No explanations were offered for the exclusion of Smith and Jones, and none otherwise appear from their personnel files. Gregory and Merryman are discussed below.

Phyllis Durham testified[158] that Donnie Steen was the only striker who responded within the deadline of the August 30 letter, and he was "reinstated" on September 4, 1974. She had instructions from Plant Manager Thomas that, if strikers did not return within the time limit of the letter, they were not to be considered for employment.[159]

Steen had been hired on July 31, 1972, joined the strike on September 14, 1972, and was terminated for not being at work on September 26, 1972. Company medical insurance coverage for Steen was in effect during September 1972 and was canceled shortly following his termination. Looking through Steen's personnel file on early questioning of the General Counsel, Durham testifed that an application for insurance on his behalf was filled out and dated December 6, 1974—about 90 days from Steen's rehiring date on September 4. It is the Company's policy to apply for insurance 90 days after the hiring of any new employee. Upon later direct examination by Respondent, Durham offered as the reason the insurance application was dated on December 6 only that "I failed to remember to put it in the mail to get him to fill it out." I do not credit the latter testimony. The evident fact is, and I find, that Steen was not given full reinstatement when rehired after the August 30 letter. Additionally, it appears that Steen was required to fill out a new employment application containing the probationary language as described *supra*.

The Union's September 20 letter to Trousdale stated that Willa Thurman, Wanda Smith, Bobbie Gregory, Clovis Merryman, and other strikers expected to report for work on September 26.[160] Gregory testified without contradiction on cross-examination that a group including all the above, plus Sally Heitt, appeared at the plant on September 26. Personnel Director Durham told them they had to fill out new applications. Gregory, as spokesman, replied that they came to be reinstated with all their rights. Durham went to get Plant Manager Thomas. At first Thomas said he did not know what he had open, and inquired if they wanted to be all in a group or one at a time. Gregory answered it did not matter. Then Thomas stated he had nothing open. (Durham's testimony, *supra*, reflects the adopted policy of refusing to offer employment, even as new employees, to applying strikers after the deadline in the August 30 letter.) On September 29, Gregory returned alone and spoke with Thomas. Asked where he wanted to work, Gregory indicated that previously he held positions in shipping and receiving. Thereupon he was told there were no vacancies, but he would be called. He heard nothing from the Company thereafter.[161]

Gregory's testimony on cross-examination establishes the following: On June 19, 1972, he and Merryman got into a fight (during which both were injured). Their supervisor, Marty Durst, told them to go home, cool off, and come back the next morning. On June 20, when Gregory came in, Durst said he would have to let him go for fighting on the job in violation of company policy. Gregory disputed there was such a policy, citing a recent instance in which participants in a fight were not fired. Then he asked if it was going to be fixed up so that he could draw his vacation pay, and Durst agreed. They proceeded to the office where Gregory's wife, the personnel clerk at the time,[162] was told by Durst "to fix up Bobby's papers" to show "lack of work" as the reason for his separation. About June 23, he joined the picket line. In Gregory's personnel file in evidence, a notice indicates he was "terminated" as of August 25, 1972; his last day of work was on June 19; and no entry is shown whether he was discharged or voluntarily quit. A company form signed by Durst which was sent to the State Employment Security office regarding Gregory's unemployment insurance states "No work available." Merryman's personnel file shows a termination notice on August 25, 1972, and a layoff date on June 19, 1972.

The General Counsel specifically states he does not allege the termination or layoff of Gregory or Merryman as an unfair labor practice. He rests solely upon the contention in the complaint that they were unlawfully denied reinstatement. For its part, Respondent relies on this altercation as reason for their termination. Since it

[158] For Trousdale, essential testimony was given only by Durham, head of payroll since 1967, as well as personnel director since April 1973. Billie Huffines, office manager, had no authority or knowledge on the pertinent issues regarding the strikers. Huffines testified concerning the present whereabouts of certain Trousdale officials who were not called. Supervisor Marty Durst (regarding Gregory) was deceased. She had no idea as to Dan Miller, plant manager during the earlier part of the strike. Louis Horowitz, plant manager in 1972, had gone to Puerto Rico. Edward Thomas, plant manager from sometime in 1973 until July 1974, was working for another company in Reading, Pennsylvania. No mention was made of L. F. Orenstein, the plant manager who succeeded Thomas and was involved with the August 30 letter. (Apparently, there was an overlapping period after July 1974 when Thompson and Orenstein were both acting on behalf of Trousdale.)

[159] Elsewhere, she testified that Orenstein gave instructions that, if any "walkers" came in after the August 30 letter, "we were to put them to work." She undertook herself, without advice, to construe the August 30 letter to mean "reinstatement" and applied it within her own definition—as to which she was not sure, for example, concerning immediate insurance coverage.

[160] Athlena East was named in the September 20 letter, but not the September 4 letter.

[161] During Gregory's conversations with Thomas, nothing was mentioned concerning the altercation involving Gregory next discussed in the text.

[162] Personnel director, according to Durham.

must be assumed that Gregory and Merryman were not unlawfully terminated or laid off by the Company, they had no reinstatement rights on June 19. That they joined the picket line on June 23 would not invest them with striker status unless they were employees at the time. It is evident that the termination was shown on the record as a layoff merely as an agreed indulgence in order that Gregory could draw his vacation pay and seek to obtain unemployment insurance. In these circumstances, I find that the layoff of Gregory and Merryman does not carry an inferable prospect of recall, as to preserve their employee status under the Act. Nor is there sufficient support for finding that, as applicants for employment, they were denied "reinstatement" because they engaged in picketing. Accordingly, the complaint is dismissed as to Gregory and Merryman.[163]

It is therefore found as to Westmoreland and Trousdale that the Company failed to offer or grant valid, bona fide, and full reinstatement to the strikers (listed in Schedules III and IV, appended [omitted from publication], except those noted as dismissed), upon their unconditional applications, thus violating Section 8(a)(1) and (3).

F. *Aynor and Loris*

The strike commenced at Aynor and Loris on July 16, 1970. Carl Jones, who was then the plant manager at Aynor, was replaced by Herman Epstein in 1971.[164] Mildred Hardwik, as Aynor's production manager, was responsible for hiring during the entire period of the strike. At Loris, Leonard Moore was the plant manager.[165] Housand, the personnel manager, did all the hiring after consulting with Moore.

The principal issues involving the instant plants, on virtually identical facts, have already been determined in the discussions covering Decaturville, Westmoreland, and Trousdale, and the same findings, as pertinent, are extended here.

The original complaints allege that 15 and 55 employees, respectively, at Aynor and Loris, were effectively involved in the strike.[166] At both plants the strikers were sent the typical company letter when they first joined the strike, directing them to report to work by a specified time or they would be replaced by a new employee and their records marked accordingly. At Aynor, those who failed to report back within the deadline were immediately terminated, with termination notices placed in their personnel files but not mailed to the strikers. These letters in themselves were violative of Section 8(a)(1). The terminations at Aynor thereafter, as well as the broad policy at both plants of terminating strikers for taking employment elsewhere,[167] violated Section 8(a)(1) and (3). As to Aynor and Loris, I find that the recipients of these letters could, and did, reasonably believe that, if they failed to meet the deadline, the Company would deny them further employment.

In 1974, after the Union's unconditional application of April 19, the Company sent the first of the typical letters (on May 7 at Aynor and May 11 or 13 at Loris) to the employees listed by the Union, who had not therefore been removed from the payroll.[168] The second letter was sent to the same strikers (on June 1 at Aynor and June 3 at Loris), generally excepting those who had responded to the first letter, regardless of the outcome. The third letter of August 30 was sent to selected strikers, excluding particular individuals for various reasons determined by the plant manager in conjunction with Attorney White.[169]

Aynor

Throughout the strike, and thereafter, new applications were required of all strikers who sought reemployment, including those who responded to the August 30, 1974, letter as well. The applications contained the same 90-day probation provision to be signed by the applicant, as described *supra*. Production Manager Hardwik was under instruction to hire strikers who responded to any of the three 1974 letters, or otherwise came to the plant during this period—only if they were needed or suitable jobs were open at the time. In the May and June letters, or upon their personal appearance, strikers were not offered reinstatement to which they were entitled. They were therefore not obligated to accept any lesser offer and could not be bound by any indication of their unavailability at the time. Nor was the August 30 letter a valid reinstatement offer for reasons earlier shown. In all instances in which jobs were offered or rehiring took place upon direct application of individual strikers, the conditions of employment essentially entailed new employees status.

It is unnecessary to detail all the circumstances litigated and argued in individual cases. Particular findings are made as follows:

Delores Evans and *Velma Small* are listed in the complaint at both Aynor and Loris. The latter was not an Aynor employee. *Millie Lane* was terminated in August 1966, and had not thereafter personally reapplied for work. *Cathy Martin* has no employment record and is not shown to have engaged in the strike. As to all the foregoing names, the complaint relating to Aynor is dismissed.

Sarah Allen was hired on January 18, 1972, joined the strike on February 28, 1972, and was terminated as of such date after failing to return by the deadline of the

[163] The General Counsel's motion to strike Gregory's testimony concerning the June 19 altercation is denied, and Respondent's reoffer of Gregory's affidavit as corroborating his testimony is rejected.

[164] Jones did not testify; Epstein died in 1977.

[165] As earlier noted, about December 1970, the two existing plants at Loris were merged into one, with Moore as the plant manager. After the merger, Epstein became the manager at Aynor.

[166] At Loris, the average employee complement consisted of about 600 when the strike began, 675–700 when the strike ended, and 800 thereafter, continuing to the present.

[167] At Loris, the rule of termination after 3 days of unexcused absence was not generally applied to strikers. However, if Housand did not personally see these employees on the picket line for 3 days, termination would not be revoked if she observed them as strikers on the fourth day.

[168] See Schedules V and VI, appended hereto, listing with notations the affected employees at Aynor and Loris. [Omitted from publication.]

[169] As to Loris, it was testified that if any of the letters were returned as undelivered, they were placed in the strikers' files and nothing else was done.

Company's post-strike letter. She was rehired in January 1973 as a new employee, and quit on January 22, 1973, because she found herself unable to perform the particular job in which she was placed. She had been a top stitcher when she joined the strike, and applied for the same work in January 1973. However, she was put back to train on side seaming, which she tried and "couldn't do." I do not accept as sufficient Hardwik's explanation that the "garment which required top stitching" was not being made in January 1973, or Respondent's implied contention that Allen was given substantially equivalent employment. Moreover, Allen was rehired as a new employee and was not legally obliged to continue such status without restoration of her full conditions of reinstatement. Her later application on May 11, 1974, was not acted upon when submitted. Hardwik's attempt to reach Allen several days later and the purported hiring of Allen (on a slip attached to her application) for a job on May 16, without Allen's knowledge or consent, are immaterial, since in any event she was to be taken back as a new employee.[170] *Ila Mae Cannon* was rehired on June 5, 1973, as a new employee, and was still employed at the time of the hearing. *Mildred Dew* came to the plant after the company letter and filled out an application on May 14, 1974. Asked by Hardwik "if she was ready for a job," Dew said she wanted to give her present employer[171] 2 weeks' notice and avoid losing her vacation pay on this job by quitting immediately. Hardwik replied, "all right." The August 30 letter to Dew was returned to the Company as "unclaimed." *June Lauder Johnson* personally submitted an application on June 12, 1974, after receiving the company letter. When Hardwik inquired if she were "ready to come to work," Johnson replied that she had a job which she did not wish to quit immediately and jeopardize her vacation pay. Hardwik testified that she made no effort further to contact Johnson as she had nothing open later and "didn't bother with it anymore." Hardwik also stated she was personally instructed by Attorney White to hold off on Johnson's June 12 application because her work record was bad. Johnson received the August 30 letter. On September 13, she appeared and filled out another application, but was not hired. Gracie Rabon was sent the May and June letters. Hardwik identified Rabon as a striker, among others named in the complaint. She also testified that Rabon last worked for Aynor in June 1965.[172] Whether Rabon was employed if and when she joined the strike are questions left for determination in the compliance stage of the case. Nannie (Jordon) Martin, after striking, was rehired on December 26, 1972, was terminated July 11, 1974, when she purportedly quit voluntarily, and was rehired on August 29, 1974. Since she was rehired on both occasions as a new employee, her entitlement extends to the restoration of full reinstatement. Jeanette Mincey was sent all three company letters in 1974. Hardwik testified that Mincey came to the plant in September 1974; Mincey then said that it was no use to fill out the application, as requested, that she could not come back because she had twin babies, 2 months old, and that she had to stay home to feed them. She is included among the three strikers listed in the Union's September 20, 1974, letter, to Aynor[173] indicating they would report for work on September 26. Other testimony from Hardwik that the three named strikers did not show up on September 26 does not affect the results herein. Geralyn (Gerry) Skipper was sent the August 30 letter, received on August 31, and filled out an application at the plant on September 3.[174] Hardwik told her that she would be contacted as soon as something could be found. Dated September 11 and received September 20, a letter from Hardwik informed Skipper—"if you are interested in employment with us you must report for work by Monday, September 16." On September 16, or sometime after September 20,[175] in a telephone conversation, according to Hardwik, Skipper then revealed that she was pregnant, and that her husband was farming and she would stay to help him. Hardwik attached a slip to Skipper's application indicating a specific job, the name of the supervisor, and a hire date of September 16. Since Skipper and Mincey were at no time made a valid unconditional offer of reinstatement, it is not deemed necessary here to pass upon the questions of pregnancy and postpregnancy unavailability.[176]

Loris

Testimony was given by Plant Manager Moore and Personnel Manager Housand that throughout the strike, and particularly after the May, June, and August 30, 1974, letters were mailed out, all strikers who applied would have been "reinstated" with full seniority and benefits. Housand indicated that, "prior to mid-September 1974," a "couple" of strikers had been "reinstated for work." Moore did not tell Housand what he intended to do, but "was going to take it up with her when somebody did in fact come for a job, and there weren't any" strikers who did. No records were available at the hearing to demonstrate whether any of the strikers had been properly reinstated, because these as well as other pertinent documents were consumed in a plant fire in March 1975. In the specific instances (described *infra*) in which strikers communicated with Housand and Moore concerning their jobs, it is conceded that they were not verbally told they would be reinstated nor were the conditions articulated as what would constitute reinstatement under the law. The May and June letters on their face

[170] Inferably, the procedure in attaching such a form to the striker's application was designed to cut off backpay liability. Hardwik testified she made no further effort to contact Allen "because I gave her ample time to call in and get back to work." Since 1974, Allen made several applications for employment, without success; and, in September 1978, she was told at Aynor that they were "not hiring," even though it appears they were seeking and hiring employees at the time.

[171] As applied to strikers, Aynor's policy was to consider such employees who take work with another employer as voluntary quits subject to termination.

[172] I have found Hardwik's testimony frequently changing and unreliable.

[173] Also Ernestine Almeida and Frances (Lucy) Larrimore.

[174] The contention that she did not come to the plant for the purpose of obtaining reinstatement is rejected—as the fact is apparent on its face.

[175] The date is inconsequential. Further, it is noted that Hardwik's testimony changed twice as to when the conversation took place.

[176] Cf., e.g., *Little Rock Airmotive, Inc.* v. *N.L.R.B., supra*, 455 F.2d at 169 (8th Cir. 1972); *Murray Products, Inc.*, 228 NLRB 268, 269, fn. 8 (1977).

contain no semblance of a reinstatement offer, while the offer expressed in the typical August 30 letter was invalid for reasons already shown in this decision.

Following receipt of the Union's April 19, 1974, letter, Moore consulted with his superiors in New York and with Attorney White as to procedures in dealing with the strikers. White prepared the May, June, and August 30 letters, identical to those used at other Marlene plants, and supervised the selection of those on the Union's list to whom the letters were sent. Responding to any of these letters, striker applicants had to fill out an application, usually requested at the plant switchboard. The applicant was seen and interviewed by Housand only *after* such application was completed.[177] Strikers were to be offered their former or "similar" jobs only when available. Moore averred that "if it wasn't available, then they could wait until it was available," which, he added, might be a day, a month, or a year. Thus, Loris failed to meet the requirement of immediacy in the reinstatement of unfair labor practice strikers. New applications were a precondition to hiring the strikers.[178] And, admittedly, strikers rehired in the years after 1974 were taken as new employees.

In the face of the foregoing, the detailed instances below, and record showing of a centrally coordinated pattern embracing all the struck plants of Marlene, it was incumbent upon Loris to come forward with concrete evidence, apart from testimonial intentions, that the strikers were properly reinstated following their applications.[179] It failed to do so. Furthermore, in my opinion, Housand labored under misconceptions as to the meaning of reinstatement, while she was striving to testify in a manner favorable to the Company. Moore's testimony was constantly shifting and equivocal. Regarding the instructions to him and his intentions to reinstate the strikers, his testimony is not credited.

In particular cases, findings are made as follows:

Delores Evans was terminated as of July 3, 1970, her last day of work. In her file, the termination notice is dated July 20, after an intervening vacation period. *Velma Small* was terminated for lack of work on September 1, 1967, and was not reemployed thereafter. *Frances (Lucy) Larrimore* was never employed, as testified to by Housand. As to these cases, the complaint is dismissed.

Billy Mae Floyd received the August 30 letter on September 13. Shortly thereafter, she called Housand indicating that it was not possible for her to return at this time because of a babysitter problem. *Myrtis Galloway* and *Theresa Tompkins*, after the Company's August 30 letter (received, respectively, on September 3 and August 31), came to the plant together on September 5. Housand testified both requested a leave of absence to take surgery and were told to get a doctor's statement, which is a "normal procedure." Galloway said she would get back within 7 days; neither has since communicated with Loris.[180] *Linda Gause* received the company letter on May 21, 1974. On May 22, she wrote Loris that she would soon return from out of town, would like to be employed again, and would apply at the plant. No further evidence is shown. Since these strikers were not validly offered unconditional reinstatement, they were not bound by such indications of their unavailability.

John Bryant, a witness, appeared at the plant on June 7, 1974, after receiving the company letter. Housand insisted that he fill out an application. Bryant refused on the ground he would "lose seniority." He then left, and thereafter heard nothing further from Loris. Housand testified she told him she would contact him, after checking to find an available pressing machine. She later sent him a message, through another employee, to come to work on July 23, but he failed to report. She explained that his application, not available at the hearing, was discarded after 6 months. It is found, in any event, that he was not offered reinstatement and was sought for work only as a new employee. *Harvey Bellamy*, a witness, came to the plant after the June and August letters, talked to Housand, filled out an application at least once, and on each occasion was told that there were no openings.[181] *Marilyn Boswell* is included among the employees who were sent the typical return-to-work letter when she joined the strike. The General Counsel's summary (G.C. Exh. 76) indicates that she was "reemployed"July 1, 1970, terminated April 27, 1971, for illness, reemployed September 9, 1971, and terminated October 20, 1971, because "she could not do the job." In the *compliance stage* it should be determined whether Boswell timely engaged in the strike as to acquire reinstatement rights and, if so, whether such rights afford her protection in conformance with legal conclusions herein. *Linda (Shannon) Faircloth* made out an application on March 15, 1974, was sent the May and June letters, was reemployed June 14, 1974, and was terminated on July 12, 1976. Housand's testimony that she was "reinstated" in June 1974, not based on independent knowledge, is unacceptable. Faircloth received the post-strike return-to-work letter. *Sharon Faircloth* was hired February 23, 1971, and terminated October 19, 1971, on the ground of 3 days' unexcused absence. She received the usual post-strike letter. *Compliance* should determine if she left on October 19, 1971, to join the strike. *(Mitchell) Mike Floyd* was hired June 8, 1970, and worked until August 4, 1970, when he purportedly left to return to school. Since he was sent the post-strike return-to-work letter, it should be determined in the *compliance* stage whether he timely engaged in the strike. *Charles Graham*, upon striking, was sent the return-to-work letter dated January 6, 1971. Moore testified that Graham appeared within the deadline of the letter, said that his regular job of presser was too tiring and he wanted something else, and then indicated that he would report to work on January 11. He

[177] Moore testified that no applications were required of the strikers who responded within the deadline of the post-strike return-to-work letter, and that those who came after the deadline were "reinstated" nonetheless, but had to fill out new applications.

[178] Applications of strikers who were hired were placed in their respective personnel files; otherwise pending applications were kept in a separate file for 6 months and then physically destroyed.

[179] For example, Linda Faircloth was rehired on June 14, 1974, and worked until July 12, 1976. Her payroll records after the fire in March 1975 were presumably available.

[180] See fn. 176, *supra*.

[181] Housand denied that she spoke at all with Bellamy during this period.

was not seen at the plant thereafter. Graham was sent the August 30, 1974, letter, which was returned to Loris as "unclaimed." I do not find from these circumstances that Graham by any means conclusively conveyed his intention to resign from his job of presser or abandon his rights as a striker. It is clear that *Clovel Goff* was not unconditionally and validly offered reinstatement when she applied on April 2, 1974, or thereafter. *Carolyn Harden*, an admitted striker, is noted in the General Counsel's summary (G.C. Exh. 76) as having been terminated on March 1, 1972, without further explanation or evidence in the record. In the *compliance* stage, the Company should be afforded the opportunity to show a justifiable basis for the termination. *Keith Lewis*, after receiving the company letter, came to the plant on June 7, 1974. The switchboard operator requested that he fill out an application, which he refused to do. Then he was asked to wait to see Housand, but he left. Lewis was not sent the August 30 letter. *Elaine Livingston*, a witness, went to the plant in May 1974, after the company letter, filled out the required application, and spoke with Housand. She was told she would be called when a machine became available. Thereafter, she was not "contacted" by Loris, directly or indirectly, respecting a job offer. On the occasion of her visit, Housand told her that, if the strikers were hired back, it would cause trouble among the workers.[182] Livingston visited the plant four times, in addition to making telephone calls. On each visit, she filled out an application, and spoke directly with Moore or Housand. The response was that she would be contacted when a job became available. Housand testified that she left a message "at Nathey Fowler's phone" for Livingston to come to work on June 1, and that no further letters were sent to this striker because she did not report on the scheduled date. She did not speak to Livingston in May 1974, but was present when Moore did. Moore later instructed her (Housand) to put Livingston "back to work" if she came in when called. Housand did not know if Livingston made out any applications. Moore testified that he interviewed Livingston on or about May 14, 1974, and on June 6 he instructed Housand to have her come back to work. Livingston's testimony is credited to the extent of any conflict. I find that no proper reinstatement offer was made to Livingston and, indeed, that her several personal applications were unlawfully disregarded. *Freddie McLumbee* joined the strike on March 18, 1971, and returned to work on April 14, 1971, apparently after the deadline of the typical company post-strike letter he received. Housand's testimony that he was reinstated is not based on independent knowledge. His personnel file does not reflect that he resumed work with all his seniority and benefits. However, the parties stipulated that the file shows he was not required to fill out an application. On May 26, 1972, McLumbee told Housand he was leaving to take another job. On August 19, 1972, he was terminated because of his other employment. The question whether McLumbee was fully reinstated on April 14, 1971, is deferred to the *compliance phase* of the case. If determined in the affirmative, his case is to be dismissed. If he were not then properly reinstated, he would be entitled to be made whole to the extent of his loss of seniority and benefits from April 14, 1971, at least until May 26, 1972, if he had then accepted regular and substantially equivalent employment. *Doris Powell's* last day of work was on August 4, 1972, and she was terminated on August 10 for being absent for 3 days without reporting—as related by Housand upon her perusal of the personnel file. However, she was included by Housand among the employees who were sent the post-strike return-to-work letter. The *compliance* investigation should determine whether Powell was actually at work before her termination and whether she timely engaged in the strike. *Larry Rhodes* joined the strike on August 14, 1970, and returned to work on August 24, 1970, apparently after the deadline of the typical post-strike letter he was sent. Housand's testimony that he was then reinstated is not based on independent knowledge. On March 21, 1972, he was "terminated" for lack of work as a service boy. Theretofore, he had been temporarily laid off subject to recall. According to Housand, a temporarily laid-off employee is required to return to the plant each of the first 3 weeks to evidence his or her availability for work. Failing to report at any such intervals, the employee is terminated. Housand thus explained, by implication, Rhodes' termination. He received none of the 1974 company letters. Housand's testimony as to the procedures after layoff was changing and materially confused. She volunteered that "to my knowledge, the guy was working elsewhere." Rhodes' case is deferred to *compliance* to determine whether he was fully reinstated on August 24, 1970. If so, the complaint as to him should be dismissed. Otherwise, his right to full reinstatement would continue despite his subsequent termination for lack of work. *Barbara Small* received all three company letters in 1974. She testified without contradiction that, in 1976, she came to the plant seeking her job, was asked by the "lady at the window" to fill out an application, and then spoke to Housand. She was told "nothing was available right now" and would be called, but heard nothing further. *Mary Sarvis* received the three company letters in 1974. Housand testified that, in a conversation after the August 30 letter, by phone or at the plant, Sarvis indicated she was not interested in returning because she had a day care center and is satisfied. The question for compliance is whether she abandoned her reinstatement rights for regular and satisfactory employment at the day care center. *Clyde Strickland* was employed from September 10 to October 26, 1971, when he was terminated for walking out without permission. Housand's testimony that she did not observe him on the picket line is not conclusive. Elsewhere she testified that he was among those who were sent the post-strike return-to-work letter. Since he did not testify, the question whether he joined the strike on or about October 26, 1971, is left to *compliance. Sandra Strickland* was hired January 26, 1971, and, according to Housand, voluntarily quit on October 5, 1973, to move to Thomasville. Housand did not remember seeing her on the picket line after October 5,

[182] Not specifically refuted by Housand. This evidence is considered solely for purposes of background reflecting upon Loris' attitude toward striker applicants.

1973.[183] Whether she did in fact engage in the srike on or about October 5, 1973, is deferred to *compliance. Ola Mae Jacobs* came to the plant after the August 30 letter, and told Housand she was employed at another company in the vicinity and was not interested in returning to work at this time. Nothing further has occurred. *Compliance* is to determine whether she was regularly employed elsewhere in substantially equivalent employment.

As to all strikers listed in the complaint affecting Aynor and Loris, excepting those dismissed or deferred to compliance, above, it is concluded that the Company failed to offer or grant valid, bona fide, and full reinstatement upon their unconditional applications,[184] and thereby violated Section 8(a)(1) and (3).

G. *Russell*

The strike at this plant[185] began on May 4, 1971. Gordon Taylor was then the plant manager, and Boyd Wilson the personnel manager.[186] As of October 1972, David McDougle become the director of manufacturing and, in March 1973, he also assumed the duties of plant manager when Taylor left.[187] In March 1975, Vivian Selby took over as personnel manager, following her long tenure as clerk in the department. She performed the functions of interviewing, calling, and hiring job applicants, after consultation with McDougle, who made the actual decision. Her predecessor, Wilson, independently had had the authority to hire.

As to this plant, the Union's letter of unconditional application, dated April 15, 1974, lists 25 names. The complaint alleges as discriminatees the same 25 employees, as well as 4 additional employees who made personal applications at the plant on October 11, 1974.[188]

In the same pattern as shown hereinabove, employees were sent the typical company post-strike letter[189] allowing 2 days to return to work. Those failing to meet the letter's deadline were promptly terminated and removed from the payroll, with separation notices placed in their personnel files but not mailed to the strikers. Following the Union's blanket reinstatement requests in April 1974, the usual three letters, on May 6, May 31, and August 30, were sent out to the strikers, upon continuing advice from Attorney White. Only two strikers[190] were selected to receive the August 30 letter. McDougle stated that these were the only two left on the Union's list who had not responded to either of the previous letters.[191] Only Chumbley returned to work after the August 30 letter, but was not reinstated. In addition, McDougle indicated, the August 30 letter was intended to toll backpay liability. All the striker applicants were required to make out and sign new applications, which had the printed provision—"if I am employed it will be on probation, and I can be terminated for any reason at the discretion of the Company without recourse." Selby stated that the requirement to submit an application was indicative of new employee status. She was aware that, since she assumed the personnel manager's position in March 1975, all strikers were to be rehired only as new employees, and that, from her examination of the files, all hiring of strikers was done on such basis in 1974. McDougle flatly admitted that, pursuant to the instructions of Attorney White, strikers responding to any of the three letters were offered employment and rehired as new employees, irrespective of what was stated in the letter.

Section 8(a)(1) was violated as to the post-strike return-to-work letters sent to the strikers. Section 8(a)(1) and (3) was violated in the terminations stemming from these letters, and in the offering and granting of employment to striker applicants only as new employees. Thus, it is amply supported on these independent grounds that the strike at Russell was of an unfair labor practice character. Concerning the nature of the strike arising from the activity undertaken in sympathy with the strike at Decaturville, the court's remand, earlier described,[192] is affirmatively answered in findings already made herein. Specifically, the Decaturville strikers, as well as the Russell sympathy strikers, were engaged in unfair labor practice strikes and are fully protected under the Act.

Circumstances in individual cases are found as follows:

Karen Wisdom was terminated as a "voluntary quit" on July 20, 1972, applied on April 3, 1974, and was rehired on April 24. She and Zelma Popplewell were the only employees on the Union's April 15 list who were not sent the usual post-strike letter. Her case is dismissed for lack of evidence, or indication of reasonable likelihood, that she engaged in the strike. *Zelma Popplewell* was granted a leave of absence on June 23, 1970, and was terminated on June 2, 1971, for failing to return within the leave period. She was sent the first and second company letters of 1974. On September 3, 1974, she filled out a new application and was rehired on September 4. *Compliance* should determine whether she joined the strike on or after May 4, 1971, and was not sent the post-strike letter because of her leave-of-absence status.

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[183] It is not material whether Strickland's file had contained return receipts for the 1974 company letters, which receipts were later missing during the hearing—as represented by the General Counsel and denied by Housand.

[184] Including applications of strikers who personally appeared at the plant.

[185] It was stipulated that, from June 1970 through September 1974, the Russell plant had an employment force varying between 600 and 700 employees, with an average annual turnover of 20 percent in the classifications of the strikers, and that, from October 1974 through February 1975, there were employees in layoff status and no additional employees were being hired. However, testimony at a later point shows that the process of recalling laid-off employees commenced in late December.

[186] Neither testified.

[187] McDougle stated that he had meetings from time to time with "personnel from New York," and occasionally conversed by phone with all plant managers at the other Marlene plants "to find out what was going on."

[188] The involved employees are listed with notations, in Schedule VII, appended. [Omitted from publication.]

[189] McDougle testified that Attorney White instructed him to send the letter "to let the employee know that we knew that they were outside the plant and that if they did not return we would consider them terminated."

[190] Alice Chumbley and Lois Ann Popplewell.

[191] Not entirely reflected in the evidence. Incorrectly, McDougle later testified he "considered it if they had not responded, that they didn't want to come back to work or they had come back to work."

[192] That case was heard before the Board in November 1971, a few months after the strike began at Russell, and contained limited issues and evidence regarding the strike. *Russell Sportswear Corp., supra*, 197 NLRB at 1117.

Alice Chumbley and Lois Ann Popplewell were the only two strikers who were sent and received the August 30, 1974, letter, as testified to by McDougle.[193] A note in Popplewell's file written by Wilson (not accepted for the truth thereof) describes a telephone call from her on September 3, 1974, indicating that she was not ready to return to work because she had a small child. Chumbley had submitted an application on May 6, 1974, and was rehired, but admittedly not reinstated, on September 4.[194]

Mary Foley, Bessie Mann, Eva Ping, Lois Ann Popplewell, Imogene Roy, and *Zelma Popplewell,* all having a note in their files written by Wilson regarding purported conversations between April and June 1974, and *Doris Flanagan,* who telephoned McDougle on May 9, 1974, were not bound by their indications of temporary unavailability since they had no reinstatement offers from the Company.

Arthur McQueary, Nathan Norman, and *Ronni Tucker* were sent the same letter dated July 10, 1974, as instructed by Attorney White, stating in substance that "an opening" existed for a spreader, and that, upon failure to come to the plant before close of business on July 12, it would be assumed that the recipient "is not interested in employment here." McDougle testified there were actually only two vacancies, and that the purpose of the letter was to "minimize" financial responsibilities that may be incurred later." McQueary and Norman had turned in new applications on March 29, 1974, and were rehired on July 15, 1974. McQueary was terminated September 18, 1974, as a "voluntary quit" without notice. Tucker did not respond to the July 10 letter. He had received the first and second typical letters of 1974 and submitted an application on May 10.

Beverly Burchett (who testified), *Janit Burchett, Delores Pemberton,* and *Olza Thomas* came to the plant as a group on October 11, 1974, filled out the required applications, and spoke with Personnel Manager Wilson. He told Beverly Burchett that as soon as they started recalling some 90–100 laid-off employees, "they would call us back." Pemberton, Thomas, and Janit Burchett were reemployed on February 7, 1975. Beverly Burchett had called and visited the plant at least six times, made out one or more additional applications, and was ultimately rehired on August 3, 1976. McDougle testified that when orders began to pick up in December 1974, the process commenced in calling back about 150 laid-off employees. Strikers and other applicants were on an equal footing, and were not considered for employment until vacancies opened in their classifications in which no laid-off employees were available. McDougle admitted he did not know of any reason Beverly Burchett was not rehired before August 3, 1976.

The alleged violations of Section 8(a)(1) and (3) are found as to all those listed in Schedule VII, appended hereto [omitted from publication],[195] by the refusal and failure of Russell to offer or grant valid, bona fide, and full reinstatement to the strikers following their unconditional applications.

H. *Frisco City Plant*

The strike at Frisco started on or about July 15, 1970. Virgil Boen was then the plant manager; James Byrd, the assistant plant manager; and Dot Phillips, the personnel manager.[196] At the time, the work force comprised 400–500 employees, of whom 250–300 were sewing machine operators. Byrd testified some 42 employees walked out to join the strike during its course at Frisco. The complaint listed 36 strikers alleged to have been discriminatorily denied reinstatement because they joined or assisted the Union and engaged in other protected activities.

The purpose and unfair labor practice character of the strike at Frisco do not vary materially from the other sympathetically struck Marlene plants already covered herein.[197]

Until Hoffman-Landlubber took over the plant on December 1, 1972, discussed below, the company practices at Frisco followed the same pattern described as to the other struck plants of Marlene. Upon their joining the strike, virtually all the employees alleged in the com-

[193] So I find. Respondent's summary (Resp. Exh. 26), prepared 3 days before the hearing, does not show the Chumbley letter or return receipt in her file. However, the letter was produced for the General Counsel during the hearing. As to Popplewell, her file contains only a return receipt showing the letter was mailed on August 30 and received on September 3. The General Counsel disputes that in Popplewell's case it was the typical letter nominally offering reinstatement. The only possible significance in these facts lies in the reflection that the personnel files of the strikers do not contain, in some instances, the normal material as relevant in this proceeding.

[194] McDougle testified during Respondent's defense in the late stage of the hearing that the failure to reinstate Chumbley was "purely an oversight on our part." Earlier, in the initial questioning by the General Counsel, he unequivocably asserted that, pursuant to Attorney White's instructions, reinstatement was not accorded strikers responding to the August 30 letter. There is no demonstrable basis to warrant Respondent's characterization in its brief that the "oversight" was due to "clerical errors" at Decaturville and Russell. Where the Company's strategy was so carefully guarded and closely advised by the same legal counsel experienced in labor relations law, the probabilities of such a coincidental oversight by plant managers at two of the seven plants involved are reduced, in my judgment, to virtually zero in point of credence.

[195] Except Karen Wisdom, and not including Zelma Popplewell if *compliance* determines she was timely engaged in the strike, and except those noted as dismissed.

[196] Only Byrd testified at the present hearing, Boen, under subpena, furnished the General Counsel with a doctor's statement indicating that he had a heart condition; he was not called. He had testified at length in the contempt case, *supra.* There is no showing that Phillips was unavailable.

[197] Boen testified at the contempt hearing that, on July 29, 1970, Ralph (Wayne) Jay, Steven Smith, and Phillip Baggett told him that "they were walking out due to the fact that they wanted more money," and that he had no other conversation with "these boys." Thereafter, that day, they joined the picket line. Randy Montgomery, on cross-examination, testified as to his reasons for striking on July 31, 1970. At first he answered—he "walked out for unfair labor practice . . . the way they were . . . doing employees . . . doing me." Pressed further, he explained that the watchman would not let him go through the picket line to obtain from his sister a key for the car, so that he could get dinner. It is apparent that these are unsophisticated employees. Boen's terse testimony scarcely establishes that "more money" had any direct bearing in the strike. Montgomery merely explained the pique prompting his decision to join ranks with the other strikers. The objective fact is that they picketed behind the banners protesting Marlene's unfair labor practices at Decaturville. The Special Master found that this was the precipitating cause of the strike, as it plainly was. In any event, it is sufficient that unfair labor practices played a substantial part in causing the Frisco strike. See case in fn. 59, *supra.*

plaint were sent the typical return-to-work letter.[198] None of these strikers reported within the deadline allowed. They were thereupon terminated and removed from the payroll. Formal separation notices placed in their personnel files were not revealed to the strikers themselves.[199] Strikers who thereafter sought reinstatement were treated as any other applicant, i.e., as new employees.[200] They were required to fill out new applications, containing the essential probationary language earlier quoted in this opinion. The applications of strikers not rehired were kept in a separate file and physically destroyed after 6 months. Such documentary evidence of striker applicants was therefore unavailable at the hearing. Byrd testified he was handling the strikers as instructed by Attorney White.

Frances Phillips, a striker, testified she went to the plant about July or August 1972 (though uncertain of the year) and spoke with Boen and Byrd. Byrd said that, if she had come back before the deadline (of the post-strike company letter), he would have put her "back on her machine," but as of now he had no openings. She also called Boen a few weeks later, with the same result. At the time, Frisco was advertising in the Monroe Journal for machine operators. In March 1972, Ralph Jay spoke to Production Manager George Hall at the plant in seeking reinstatement to his job. Again that year, in July or August, he and Jewell Woods came to the plant and were seen by Personnel Manager Phillips. At both visits, the response given was—"no openings." In 1972, Lela Strother and Willie Wesley came together and were interviewed separately by Boen, who gave Strother the same answer. Sandra Matchett and Randy Montgomery were alleged discriminatees in the contempt case,[201] and testified therein. Matchett unconditionally offered to return to work on November 18, 1970, and Montgomery in July 1971. Boen responded to both that there were no openings. He told Matchett he had given her a chance to return, citing the post-strike letter, and she had refused.[202]

Boen's testimony in the contempt hearing discloses that "want ads" for various jobs at Frisco[203] were run "quite frequently," including "possibly" the time the strike commenced and when Matchett made application. Based on testimony of several employees, the Special Master, with court affirmance, found unlawful conduct in that "at least one Frisco supervisor and Boen did interrogate and initiate possible plant closure and job loss if employees joined the strike."[204] On the same evidence and upon the standard of proof applicable in the present proceeding, I reach the same findings on these issues, which are not isolated or separable from proper consideration of the allegations set out in the complaint.

While the strikers were not made aware they had already been terminated, they were reasonably led to believe that any requests for reinstatement would have been futile—(1) from the post-strike letters threatening replacement,[205] (2) the supervisory threats of job loss if they joined the strike, and (3) the actual experience of the strikers who applied for return to work and consistently met with failure, stemming from the existing fact of their terminations. These three items of the company conduct were clearly areas of unfair labor practices which independently operated to establish and prolong the unfair labor practice nature of the strike. Section 8(a)(1) and (3) violations were committed as to the terminations, and the refusals to reinstate Phillips and Strother upon their unconditional applications, and Section 8(a)(1) as to the post-strike return-to-work letters.[206]

Effective December 1, 1972, the ownership and operation of the Frisco City plant passed from Marlene-Frisco to Hoffman-Landlubber, as more fully discussed below. When it became known to the Union and to the strikers, the following events and communications transpired, as pertinent:

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[198] Byrd was not sure whether Turberville was sent the letter, although she was on the picket line, and he did not recognize the name of Mary Madison in the complaint.

[199] On June 26, 1972, in the contempt case, Plant Manager Boen testified in positive terms that the strikers had not been discharged and were still employees. Essentially the same testimony was repeated by him at other intervals during the hearing, including his examination by Attorney White. In the final stage of the hearing, the question was also pursued by Union Attorney David Goodman, who was permitted leave by the Special Master limited to striker Sandra Matchett. He then testified she was carried on the "absentee" record as an existing employee, pursuant to instructions of Attorney White or a company superior. I find such testimony of Boen was a knowing and calculated falsification of grave import, which could well have affected the decision of the Special Master and the court regarding strikers Sandra Matchett, Randy Montgomery, and perhaps others, whose cases were there dismissed on the issue of the Company's refusal to reinstate them upon their applications.

[200] Boen testified—"I don't hire employees when they quit or whatever the case might be,"—then adding—if in his opinion they are "not suitable for jobs."

[201] Both were included in the present complaint but their cases were dismissed at the hearing on the General Counsel's motion.

[202] The testimony of these several applicants was not specifically denied. Boen stated in the contempt case that, after July 29, 1970, no strikers had contacted the Company to return to work. And Byrd at the present hearing averred that no one had submitted an application, because he found none in the application file.

[203] One such ad read, in part, "employees needed in other areas of our expanding production program, service people, etc."

[204] Also noted is the court's broad cease-and-desist order issued to Frisco, specifying "interrogation, layoff, discharge, refusal to rehire employees because of lawful concerted activities or Union activities, or in any other manner" interfering with the employees' Section 7 rights.

[205] For example, striker Ralph Jay testified that the letter required that he report back to work within the deadline or he would be "terminated," and Barbara Dale testified it meant she would lose her job.

[206] No defensive contentions have been raised concerning the statute of limitations proviso in Sec. 10(b) and are therefore waived. See, e.g., *A. H. Belo Corporation (WFAA-TV)* v. *N.L.R.B.*, 411 F.2d 959, 967 (5th Cir. 1969); *A. E. Nettleton, Co., et al.* v. *N.L.R.B.*, 241 F.2d 130, 133 (2d Cir. 1957). These issues were fully litigated within the framework of the consolidated complaint. Further, it is my opinion that the above-described conduct at Frisco, one of the seven wholly owned subsidiaries similarly involved in the sympathy strikes against Marlene, grew out of and is closely related to the original timely filed charges against Marlene and its subsidiaries in Cases 26-CA-3642, 26-CA-3646, 26-CA-3828, and 9-CA-6384, containing the allegations of discriminatory discharges, refusals to reinstate strikers, and other acts interfering with employees' rights guaranteed in Section 7 of the Act. E.g., *N.L.R.B.* v. *Fant Milling Company*, 360 U.S. 301, 307 (1959); *N.L.R.B.* v. *Kohler Company*, 220 F.2d 3, 7 (7th Cir. 1955). In any event, since the terminations of the Frisco strikers were not revealed, and indeed were deliberately obscured by the Company, the 6-month limitation period in Section 10(b) did not begin to run until these facts first became known at or shortly before the present hearing. E.g., *International Ladies' Garment Workers' Union, AFL-CIO (McLoughlin Manufacturing Corporation, et al.)* v. *N.L.R.B.*, 463 F.2d 907, 922 (D.C. Cir. 1972), citing *Holmberg* v. *Ambrecht*, 327 U.S. 392 (1964); *AMCAR Division, ACF Industries, Inc.*, 231 NLRB 83, 90–92 (1977).

A meeting took place at which 35 strikers, all named in the complaint, signed form letters, previously prepared by the Union, which they handed back to the union agent, *viz*:

> December 21, 1972
>
> Marlene Industries Corporation
> Frisco Sportswear Company, Inc.
> Drawer E
> Frisco City, Alabama
>
> Gentlemen:
>
> I am one of your employees engaged in an unfair labor practice strike against you for unfair labor practices committed by Marlene Industries Corporation.
>
> I hereby unconditionally offer to return to work forthwith. This is a continuing offer. Please notify me when you want me to report to work by writing to me c/o International Ladies' Garment Workers' Union, AFL-CIO, P.O. Box 1383, Station K, Atlanta, Georgia 30324.

Dated January 19, 1973, the following letter was sent by the Union:

> Marlene Industries Corporation
> 1372 Broadway
> New York, New York 10019
>
> Dear Sirs:
>
> Enclosed please find thirty-five (35) letters returned to this office for the stated reason that the Frisco Sportswear plant is no longer in business. The contents of these letters are self-explanatory. Your immediate reply is requested.

Attorney White represented on the record that this letter was received and that he has the 35 signed letters in his possession.

Frances Phillips testified that 35 strikers, including herself, signed form letters at a union meeting and then returned the letters to the union agent, *viz*:

> December 21, 1972
>
> M. Hoffman & Sons
> Frisco Sportswear Company, Inc.
> Frisco City, Alabama
>
> Gentlemen:
>
> You are the successors to Frisco Sportswear Company, Inc., a division of Marlene Industries Corporation. I am an employee of Frisco Sportswear Company, Inc., engaged in an unfair labor practice strike against this firm. As successors of this firm, you are responsible for remeding [sic] the unfair labor practices.
>
> I hereby unconditionally offer to return to work forthwith. This is a continuing offer. Please notify me when I shall report to work by writing to me c/o International Ladies' Garment Workers' Union, AFL-CIO, P.O. Box 13083, Station K, Atlanta, Georgia 30324.

The following letter, admitted in evidence, was ostensibly sent by the Union:

> January 19, 1973
>
> M. Hoffman & Sons
> 160 North Washington
> Boston, Massahusetts
>
> Dear Sirs:
>
> Enclosed please find thirty-five (35) letters which were returned to my office marked "refused-Out of Business." The contents of these letters are self-explanatory. They requested an unconditional demand for workers to return to work in your plant in Frisco City, Alabama. Your immediate reply concerning this matter is requested.
>
> Very truly yours,
>
> David Goodman
> Regional Counsel

This document, among various other exhibits, was offered by the General Counsel "by way of agreement that they are authentic, although . . . Counsel may have reservations . . . other than authenticity." Attorney White objected to the letter on the basis of competence, materiality, and relevancy "until there is proof the document was sent." He represented that "Hoffman has taken the position that it never received these letters," which were subject to subpena of the General Counsel. No evidence was offered by the General Counsel that the January 19, 1973, letter was mailed, and none was offered by Hoffman that it was not received. There is the unrefuted testimony of striker Phillips that the 35 letters were signed and returned to the Union. Attorney White was specifically made conscious of his failure to challenge the authenticity of the above letter. The letters of the strikers were addressed to both Hoffman and Friso at the Frisco City plant. The content of the above letter reflects, as reasonably interpolated, that the letters were refused at the plant for the stated reason, "Out of Business," meaning Frisco, and returned by the Postal Service to the sender. The question posed by me at the hearing—whether such early refusals in the mail by Marlene and Hoffman were disputed—remained unanswered. In these circumstances, I find that a *prima facie* showing was made by the General Counsel that the January 13, 1973, letter was sent to Hoffman, and that such showing was not overcome by Hoffman.

In early January 1973, the Union's director of its southeast region delegated Sam Tancreto, an official in the Amalgamated Clothing Workers of America employed in the Boston area, to intercede with Hoffman on the Union's behalf. From on or about January 11 until early May, Tancreto had several conversations with Hoffman's vice president, Julius F. Cohen, and, at the final stage, with President Herb Hoffman. In essence, Tancreto conveyed the message that the strikers desired employment; and he proposed that if Hoffman would put them back to work he could convince the Union to pack their bags and get out. After delays by Hoffman, it took the position, while conceding that workers were needed, that every striker make application to the firm and the

firm would judge whom they wanted to hire. These conversations were reported back to the Union.

On May 8, 1973, the Union wrote Hoffman attaching a list of the 35 strikers who had previously sent individually signed letters and reiterating the unconditional demand to be "reinstated."

On April 19, 1974, the Union sent Frisco the typical letter, as at the other struck plants, *supra*, making unconditional requests for reinstatement on behalf of the strikers, with an attached list containing 50 names. On April 30, 1974, Attorney White replied to the Union, disputing its authority to represent the strikers and the existence of an unfair labor practice strike; he suggested that the listed individuals present themselves in person at the plant to be interviewed "as to their skills" and they would be considered for available openings. On May 2, 1974, the Union wrote to Landlubber, enclosing a list of the same 50 alleged strikers and offering their "return to work immediately without condition." The identical letter was separately sent to Hoffman in Boston. On May 14, 1974, Attorney White, on behalf of Hoffman, sent the Union the same letter dated April 30, 1974, as above.

In October 1972, the existing working staff of supervisors and employees were made aware at meetings, by and through an official of Hoffman, that Hoffman-Landlubber was buying the plant from Marlene-Frisco, that it would "continue the operation with the same people," and that their jobs were not in jeopardy. Shortly after the takeover, the employees were informed that their seniority and other rights with Frisco would be honored by the new employer. As of December 1, 1972, Hoffman purchased from Marlene all the physical assets of the Frisco City plant, including the factory, land and premises, machinery, equipment, and inventory. The plant began operations in the name of Landlubber.

The entire management, supervisory, and employee complement of Frisco, excluding only the strikers, continued thereafter, without any interruption, the same essential job functions and operations. From December 1, they received their paychecks from Landlubber. The wage and piece rates remained unchanged until the spring of 1973, although it was a regular occurrence at Frisco and Landlubber that style changes carried new piece rates. Other employee benefits are identical or closely similar with both Companies; e.g., hours of work, holidays, and vacations. Frisco's application form, with the probationary language, continued to be used by Landlubber until the supply ran out, and virtually the same forms were then replaced by Hoffman.

The principal difference between the two employers, at the time of changeover, was that primarily Frisco had been producing ladies' pants or jeans, while Landlubber commenced with men's pants or jeans. About 1 year later, Landlubber added ladies' apparel, e.g., jeans, skirts, overalls, jumpsuits, vests, and jackets. Denim was used by both, but was a heavier cloth for men's jeans. The "manner in which the people were working . . . continued just the same as it had been at Frisco," even as conceded by Byrd,[207] providing the necessary skill was merely a matter of retraining, when necessary, those currently working. For some Frisco employees it took 2-3 days and for others "perhaps a month." Indeed, a "Certification To Employ Learners At Subminimum Wages" had been granted to Landlubber by the U.S. Department of Labor, upon application filed on November 21, 1972. According to Byrd, the certificate was not used because it was harder to find people at a subminimum wage than at a better wage. Without documentation, Byrd testified that, pursuant to an agreement, Landlubber continued to "sew out" Frisco's inventories and was reimbursed by Marlene. Such work was completed in 2-3 weeks. Some employees were temporarily laid off, but were assured of recall, and were gradually returned within relatively short periods as the conversion to the production of men's pants was accomplished. Also during the initial period, Landlubber was a "contractor" for Frisco in cutting but not sewing ladies' blouses until "the floor was relaid" for men's jeans. However, the employees were never made aware they were working on products for anyone other than Landlubber. Additionally, Landlubber utilized an outside contractor because, assertedly, it could not produce at this plant all the "items" it required.

Picketing continued with the same placards, as used at Frisco and at the other Marlene plants engaged in the sympathy strike—until its termination in 1974. As of the record made in this proceeding, no strikers had been hired by Hoffman-Landlubber.

The issue of successorship for purposes of this case turns upon the essential test of whether there was a continuity in the employing industry across the change of ownership.[208] The "most important" and "key" factor in establishing such successorship is proof of a substantial continuity of identity in the work force from the previous to the succeeding employer.[209]

Based upon the totality of the circumstances, I find that this "key" factor is amply fulfilled and that it far outweighs other essentially superficial elements of change relied on by Hoffman.[210] In my opinion, such alteration as took place in the transition to the incoming employer was fairly analogous to a general change in the style of the manufactured garments as opposed to any basic change in the employing industry.[211] Accordingly,

[207] Byrd replaced Boen as plant manager in August 1973.

[208] E. g., *Howard Johnson Co., Inc.* v. *Detroit Local Joint Executive Board, etc.*, 417 U.S. 249, 254 (1974); *Spartans Industries, Inc.*, 406 F.2d 1002, 1002 (5th Cir. 1969); *N.L.R.B.* v. *Horn & Hardart Company*, 439 F.2d 674, 682 (2d Cir. 1971).

[209] *Ibid; Nazareth Regional High School* v. *N.L.R.B.*, 549 F.2d 873, 879 (2d Cir. 1977); *Zim's Foodliner Inc., d/b/a Zim's IGA Foodliner, et al.* v. *N.L.R.B.*, 495 F.2d 1131, 1140 (7th Cir. 1974), cert. denied 419 U.S. 838; *Fabsteel Company of Louisiana*, 231 NLRB 372, 379, enfd. 587 F.2d 689 (5th Cir. 1978); *Border Steel Rolling Mills, Inc.*, 204 NLRB 814, 815 (1973); *Virginia Sportswear, Incorporated*, 226 NLRB 1296, 1300 (1976).

[210] Under Landlubber, certain machines and equipment were brought in which were not previously utilized at Frisco; more multineedle machines were required for men's pants and more single needle machines on ladies' pants; mobile trucks were introduced to move the work in progress, rather than being hand-carried by bundle boys, as they were at Frisco; much of Frisco's warehouse was converted to sewing room floor space; certain rewiring and relocating of machines were effected in the sewing room; obsolete and wornout machines from Frisco were put into storage; and the finished products were shipped by Frisco to customers directly from the plant, whereas they were transported by Landlubber to the Hoffman warehouse in New Jersey.

[211] E. g., *Virginia Sportswear, Incorporated, supra*, 226 NLRB at 1299.

it is concluded that Hoffman-Landlubber is a successor to Marlene-Frisco for purposes of the Act.

Before it purchased the Frisco plant, Hoffman-Landlubber was aware, or must be charged with knowledge, of the strike, the current picketing with signs protesting Marlene's unfair labor practices, and the pending litigation involving Marlene's subsidiaries engaged in the sympathy strikes.[212] *Inter alia*, Frisco's management personnel of many years were early retained by Hoffman, as was Attorney White, counsel for Marlene in such litigation from the outset. The inference is most compelling that these principals of Frisco informed Hoffman of the litigation and the circumstances of the unfair labor practices in issue before the completion of the sale. In electing to proceed as it did, Hoffman calculatedly acted at its peril.[213] The Supreme Court has determined that a successor is obligated to remedy the unfair labor practices of its predecessor, and is jointly and severally liable with the predecessor for making whole any loss of earnings suffered by employees as a result of discriminations against them by the predecessor.[214] Such is my finding here as to Hoffman-Landlubber. These unfair labor practices include the termination of all the striking employees shortly upon their joining the strike, as well as 8(a)(1) conduct committed for reinstatement by Frisco. Under *Abilities and Goodwill, Inc.*,[215] requests for reinstatement by these unfair labor practice strikers were obviated on the realistic assumption that they would have been futile (as in this case they were in actuality). As such applications were not required under Frisco's aegis, they were not so required under the succession to Hoffman-Landlubber. Therefore, it is held that Respondents Hoffman and Landlubber failed and refused to reinstate these strikers, listed in Schedule VIII, appended [omitted from publication] in violation of Section 8(a)(1) and (3), excepting of course those noted as dismissed.

Moreover, wholly apart from the successorship question, the same violations are glaringly established in the evidence that these strikers were disparately and discriminatorily excluded as a class when Hoffman-Landlubber undertook to employ all other Frisco employees, with full credit for all their past seniority, rights, and conditions under Frisco. While a successor is not dutybound to hire any of its predecessor's employees, it is nevertheless subject, as any employer, to the Act's proscriptions against discrimination for union or other protected concerted activity, or conduct which is inherently destructive of employees' rights.[216] Pursuing this theory, it has already been found that unconditional reinstatement requests of the strikers were properly conveyed to Hoffman-Landlubber upon its receipt of the 35 individual letters enclosed in the January 19, 1973, covering letter from the Union,[217] as well as in later blanket applications on their behalf from the Union which were unquestionably received by Hoffman-Landlubber. Furthermore, the dual role of Attorney White as counsel for both Marlene and Hoffman can hardly be overlooked or technically walled apart. His receipt of the strikers' letters sent to Marlene during the critical changeover is sufficient, I find, to impute the reinstatement requests to Hoffman.

Mary Madison, on the list of strikers in the complaint, was the only name Byrd could not recall (relying on his memory alone) as having joined the strike, and no other probative evidence was adduced to show she was so engaged at any relevant time. As already noted, all strikers were terminated upon failing to respond to the Company's return-to-work letter. Madison's name appears on all the striker lists sent by the Union to Marlene and Hoffman. There is a sufficient element of probability she was a striker, and her case is deferred to compliance for determination of such question.

Eloise Turberville was discharged on June 11, 1970, i.e., before the strike, and in the absence of evidence of union or protected activity on her part. In itself, the discharge cannot be questioned as wrongful or improper. The grounds stated in her termination notice are—"unnecessary roughness in handling equipment and machines. Has been warned previously many times."[218] At the discharge interview, as at the hearing, Turberville denied that she was responsible for the condition of her machine, involving the replacement of a "guide," and that she had previously been warned. Upon being discharged, Boen told her to go home and think about what she had done; he would give her a second chance and hire her back. She had been employed since 1961 and had received four efficiency awards, including "performing work on more than one machine," "outstanding attendance," "expert machine operator," and "prolonged production,"—the latter two in July 1969 and early 1970, respectively. She engaged in the picketing from July 1970 to its conclusion in 1974.

One week after her discharge, she came to the plant seeking reemployment. Boen repeated that he wanted her to think about it, and he would call her back in a couple of weeks. In early 1971 at the plant, Boen told her he had nothing open right then and would get in touch if anything came up. On at least five occasions over 3 months in the spring of 1972, she spoke with Boen and Personnel Manager Dot Phillps by telephone and was told there were no openings. In March 1973, after the Hoffman takeover, she received the same response from Boen at the plant. In April 1974, she put in an application and talked with Byrd—who said nothing was open and he would contact her if anything came up. In September 1975, during a visit to the plant, she was separately told by Dot Phillips and Douglas Burkett,

[212] Including the extant charges (see fn. 206) as of then embracing the Loris and Russell plants, and the contempt action, *supra*, which had been heard before the Special Master in 1972 but decision had not yet been rendered at the time of the contemplated takeover by Hoffman-Landlubber.

[213] E.g., *Fabsteel Company of Louisiana, supra*, 231 NLRB at 379.

[214] *Golden State Bottling Company, Inc., d/b/a Pepsi-Cola Bottling Company of Sacramento* v. *N.L.R.B.*, 414 U.S. 168, 186 (1973); *Fabsteel, supra* at 378.

[215] 241 NLRB 40, *supra*.

[216] *Howard Johnson Co., Inc.* v. *Detroit Local Joint Executive Board, et al., supra*, 417 U.S. at 262, fn. 8; *Fabsteel Company of Louisiana, supra*, 231 NLRB at 381.

[217] It may well be decided, if necessary, that Marlene and Hoffman had earlier refused to accept the December 21, 1972, letters in the mail and should therefore be held to the date of those deliveries.

[218] Turberville testified this language was not in the notice when she signed it. Byrd testified that Plant Manager Boen and her supervisor, Rachael Jay, signed it after Turberville left. As I find, Boen and Byrd were present at the discharge interview. Only Byrd was a witness for the Company.

plant manager at the time, that nothing was available. He said he would get in touch. Again in January 1978, Byrd replied to her in the same fashion. Turberville testified that, in these conversations, no mention was made of the reason for her discharge. Byrd had previously fired employees and subsequently rehired them. He had observed Turberville on the picket line. I do not credit his testimony that "Turberville's transgression was so serious, that she could not ever be considered for employment." I find that Turberville was repeatedly refused employment upon her applications, beginning on a date "around the first of" 1971, because she had engaged in picketing activity, protected under the Act whether or not she was an incumbent employee.[219] Accordingly, violations of Section 8(a)(1) and (3) were directly committed by Respondents Marlene and Frisco, and directly committed by Respondents Hoffman and Landlubber, in addition to Hoffman-Landlubber's derivative liability as successor to remedy its predecessors' refusal to hire Turberville.

Upon the foregoing findings of fact, and upon the entire record in the cases, I make the following:

CONCLUSIONS OF LAW

1. Respondents Marlene, and its wholly owned subsidiaries, Decaturville, Westmoreland, Trousdale, Loris, Aynor, Russell, and Frisco, constitute a single employer, and each are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondents Hoffman and its wholly owned subsidiary, Landlubber, constitute a single employer, and each are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. The Union is a labor organization within the meaning of Section 2(5) of the Act.

4. By the mass discharge of its pressers on June 23, 1970, for engaging in protected concerted activities, Respondent Decaturville has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

5. The strike at the Decaturville plant on and after June 23, 1970, was caused and thereafter prolonged by unfair labor practices of Respondent Decaturville.

6. By terminations of its nonpresser employees for engaging in protected strike activities, Respondent Decaturville has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

7. The strikes at Westmoreland, Trousdale, Loris, Aynor, Russell, and Frisco in sympathy with the strike at Decaturville were each unfair labor practice strikes from their inception and were prolonged by further and repeated unfair labor practices committed by each of these Respondents.

8. By terminating its strikers for engaging in protected activities, Respondents Westmoreland, Trousdale, Aynor, Loris, and Russell have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

9. By adopting the policy of rehiring, and by rehiring the strikers, only as new employees, Respondents Decaturville, Westmoreland, Trousdale, Loris, Aynor, and Russell have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

10. By failing and refusing to reinstate strikers, upon their unconditional applications, Respondents Marlene and its subsidiaries, Decaturville, Westmoreland, Trousdale, Loris, Aynor, and Russell have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

11. Respondents Hoffman and its subsidiary, Landlubber, as of December 1, 1972, are successors under the Act to Respondent Marlene and its subsidiary, Frisco, at the Frisco City, Alabama, plant.

12. Respondents Hoffman and its subsidiary, Landlubber, are obligated under the Act to remedy the unfair labor practies of Marlene and its subsidiary, Frisco, at the Frisco City, Alabama, plant, committed prior to December 1, 1972.

13. Respondents Hoffman and its subsidiary, Landlubber, by failing and refusing to reinstate the strikers at the Frisco City plant, and by refusing to hire Eloise Turberville for engaging in protected concerted activities, independently have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

14. Respondents Hoffman-Landlubber and Respondents Marlene-Frisco are jointly and severally responsible for making whole the unfair labor practice strikers, and Eloise Turberville, at the Frisco City, Alabama, plant, for the unlawful discriminations practiced against them.

15. By the foregoing, and other independent acts and conduct, interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, the above-named Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

16. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondents have engaged in unfair labor practices, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. As an ordinarily appropriate remedy on such facts as are present, a broad cease-and-desist order is responsively warranted by reason of the wholesale discharges and other discriminations at all the plants involved, graphically displaying Marlene's propensity generally to violate the Act.[220]

In view of the long duration of the strikes commencing in 1970 and 1971 at the various plants herein, the equally long period since the end of the strikes in September 1974, and the numerous, persistent, and flagrant unfair labor practices of Marlene and its subsidiaries

[219] *Phelps Dodge Corp.* v. *N.L.R.B.*, 313 U.S. 177, 210 (1941); *John Hancock Mutual Life Insurance Company* v. *N.L.R.B.*, 191 F.2d 483, 493 (D.C. Cir. 1951).

[220] *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979); *N.L.R.B.* v. *Express Publishing Company*, 312 U.S. 426 (1941); *N.L.R.B.* v. *Entwistle Mfg. Co.*, 120 F.2d 532 (4th Cir. 1941).

which precipitated and prolonged these strikes, certain special remedies are necessary to restore, insofar as practicable, the *status quo ante*. Without doubt, many of the strikers have since taken employment with other employers and have found it necessary purely for economic reasons to move to other locations. They should be accorded full and equitable opportunity to consider present offers of reinstatement back to their respective plants, free of any fears of the recurrence of the unfair labor practices against them. While it was technically unnecessary for explicit reference in the framing of the consolidated complaints, it can scarcely be gainsaid that the realistic undercurrent of the strikes against the Marlene plants was an uninterrupted extension on the Company's part of its well-established and previously Court-held countercampaign of "massive anti-union activities" on a "system wide and centrally coordinated" scale. It must therefore be contemplated for remedial purposes that, during the 9-year period from the onset of the strikes, the Union has perforce been estopped in its ongoing and financially committed organizational campaigns at each of these widely spread Marlene plants—by the recurring and unremedied unfair labor practices, which effectively destroyed for this period the employees' right of free choice in the possible selection of a bargaining representative. It will therefore be particularly recommended that:

Respondents Marlene, together with its subsidiaries, Decaturville, Westmoreland, Trousdale, Loris, Aynor, Russell, and Frisco;[221] and Respondent Hoffman, together with his subsidiary, Landlubber:

1. Shall, in addition to the usual postings on all plant bulletin boards, mail a copy of the appropriate notice, attached, to each employee currently employed, and to each striker named in Schedules I through VIII, appended hereto [omitted from publication] (except those noted therein as dismissed), in accordance with the specific plant involved. The notice shall be signed by the chairman of the board of directors, the corporation president, and the plant manager of the particular plant employing the affected employees. All diligent efforts shall be employed by Respondents to assure that such communication reaches the addressees, including the acceptance of assistance by the Union, if again offered. Respondents shall provide the Regional Director for the applicable Region with proof of such mailing. In addition, the notice shall be included in appropriate company publications, such as employee newsletters.[222]

2. Shall be required to publish in newspapers of general circulation in the area of the respective plants involved the essential terms and provisions of the Board's Order herein, as reflected in the appropriate notice appended, once a week for 4 consecutive weeks, at a reasonable time and in a form approved by the Board's Regional Director within the region encompassing the particular plant.[223]

3. Shall, upon request of the Union made within 3 months of the Board's Decision and Order, immediately grant the Union and its representatives (a) reasonable access to the plant bulletin boards at all places where notices to employees are customarily posted, at each of the involved plants for a period of 1 year from the date of request, and (b) immediately permit a reasonable number of union representatives access for reasonable periods of time to all canteens and rest and other nonwork areas, including parking lots and plant approaches, within each of the respective plants for a period of 1 year—subject only to reasonable and nondiscriminatory regulations in the interest of plant efficiency and discipline, provided, however, that said regulations do not serve to thwart the employees in the exercise of the rights guaranteed them herein.[224]

4. Shall, at such reasonable time after the entry of this Order, as the Board may request, convene during working time by departments and shifts all its employees currently employed in each of the respective plants, and at its option either have the notices, as applicable, read by the plant manager of such plant or provide facilities and permit a Board agent to read such notices to the said employees. If it is decided that the notices are to be read by the particular plant manager, the Board shall be afforded a reasonable opportunity to provide for the attendance of a Board agent.

5. Respondents Marlene, together with its subsidiaries, Decaturville, Westmoreland, Trousdale, Loris, Aynor, and Russell (but excluding Frisco separately treated below) shall offer the unfair labor practice strikers in Schedules I through VII, appended hereto [omitted from publication] (except those whose cases are noted as dismissed),[225] immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights and privileges previously enjoyed, discharging, if necessary, any replacements hired in their former jobs—with the provisions (a) that a copy of the notice as applicable in Appendixes A or C, shall accompany the reinstatement offer (to demonstrate more directly the rescission of unremedied discriminations) and (b) that a reasonable period not to exceed 2 weeks after receipt of a prompt request of any such discriminatee shall be provided in order that fair departure notice may be given to an interim employer, and necessary arrangements may be made by the employee to return to work at his or her former plant of Marlene.

6. Respondents Marlene, together with its subsidiaries, Decaturville, Westmoreland, Trousdale, Loris, Aynor, and Russell (but excluding Frisco) shall make whole all discriminatees described in Schedules I through VII

[221] In the name of Marlene on behalf of Frisco, if Frisco no longer survives as a legal entity.

[222] Cf., e.g., *Florida Steel Corporation*, 231 NLRB 651, 652 (1977), 233 NLRB 491 (1978); *J. P. Stevens & Co., Inc.*, 239 NLRB 738 (1978).

[223] In the contempt case, *supra*, the court affirmed the Special Master's recommendation as to Decaturville, Loris, Aynor, and Frisco, based on limited findings, that the terms and provisions of the court's order be published in local newspapers essentially in the form provided in the text above.

[224] See, e.g., *Marlene Industries Corporation, et al., supra*, 166 NLRB at 707. Essentially the same remedies were ordered by the court in the contempt case, *supra*, for periods of 1 year as to plant bulletin boards and 6 months as to plant approaches and parking lots.

[225] And subject to the determination of questions affecting some of the named discriminatees, which are deferred to the compliance stage, as described in the text of this Decision.

[omitted from publication] (except those noted as dismissed), for any loss of earnings they may have suffered by reason of their unlawful terminations, denials of reinstatement, or rehiring as new employees, by payment to each of a sum of money equal to that which each normally would have earned, and the monetary value of vacations, holidays, pensions, and other benefits they normally would have accrued, absent the discriminations against them, from the date of their unlawful terminations,[226] or the date of their unlawful denial of reinstatement, or the date of their reemployment as new employees, as the case may be—until 5 full working days[227] after they receive Respondents' proper offer of reinstatement or until the date they have obtained, or are offered, substantially equivalent employment with another employer.[228] Backpay shall be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977). (See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).)

Respondent Hoffman, together with its subsidiary, Landlubber, shall (a) offer to each of the unfair labor practice strikers listed in the attached Schedule VIII [omitted from publication] (except Eloise Turberville and those noted as dismissed) immediate and full reinstatement, and to Eloise Turberville immediate and full instatement to her entitled job, in the form and manner set forth in paragraph 5, above, and (b) jointly and severally with Marlene make whole the above-named strikers and Eloise Turberville for their loss of earnings in the form and manner set forth in paragraph 6, above.

Respondent Marlene, together with or on behalf of its subsidiary, Frisco, shall, jointly and severally with Respondents Hoffman and Landlubber, make whole all strikers and Eloise Turberville, described in the attached Schedule VIII [omitted from publication], for their loss of earnings, in the form and manner described in paragraph 6 above.

[Recommended Order omitted from publication.]

[226] In the absence of an offer of reinstatement to the discharged striker, the Employer remains free to avoid or reduce its backpay liability by establishing that such employee would not have accepted the offer if made, or by any other evidence showing the incurrence of a willful loss of earnings, *Abilities and Goodwill, Inc., supra*, 241 NLRB 27, fn. 5.

[227] Cf. *Drug Package Co., Inc.*, 228 NLRB 108, 113 (1977), reflecting the Board's policy of balancing the interests of unfair labor practice strikers in returning to work and the need of the employer to effectuate such return in an orderly manner.

[228] See *Golden State Bottling Company* v. *N.L.R.B., supra*, 414 U.S. at 186. It has been held that reinstatement offers of jobs (at a substantial distance) away from the employing enterprise does not constitute an offer which will effectuate the policies of the Act. *Fabsteel Company of Louisiana, supra*, 231 NLRB at 380.

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